Frants Dalgaard-Knudsen

MINERAL CONCESSIONS AND LAW IN GREENLAND

VOL. I.

1991

In pursuance of the European Convention of 19. April 1972, ratified by Denmark on 28. February 1975, and following public defence on 10. May 1991 at the European University Institute, an Examining Board comprising;

Prof., Dr. jur. Isi Foighel (chairman),

Prof. Terence C. Daintith,

Prof., Dr. jur. Hans Jacob Bull,

Prof. Francis Snyder,

Prof., Dr. jur. Thomas W. Wälde,

decided to award the author of this dissertation the academic degree of Doctor of Laws.

Mineral Concessions and Law in Greenland

"Mineral Concessions and Law in Greenland"

OUTLINE OF THE DISSERTATION

TABLE OF CONTENTS

PREFACE

In the autumn of 1984, I started to consider to write a doctoral dissertation. The reason was that I had the privilege to be admitted to the circles of researchers at the European University Institute in Florence. I was thus faced with the problem of choosing a field to be the subject of my research.

My background was that I had a Danish university law school degree, but how could this be turned into an advantage in the English-speaking international university milieu? A look at a globe gave the answer. Greenland. This enormous land mass close to America and larger than the area of the EEC is part of the Realm of the Kingdom of Denmark. The natural wealth of the Greenlandic mountains would be of interest not only to the Greenlanders and Denmark, but also to the rest of the industrialized world, and one would have to be a Danish speaking lawyer to attempt to analyze the legal conditions for exploitation of these natural resources.

The following is the result of my investigations into this subject. The most important potential group of recipients of this analysis is presumed to be interested European and especially American mining companies, as well as Danish/Greenlandic and also Commonmarket authorities, not to mention those lawyers interested in the issue.

This work is a doctoral dissertation, and not just a guidebook for interested American mining companies. The work therefore includes numerous discussions of the details of Danish and Greenlandic law, as well as quotations of and references to literature, articles and other material written in Danish. For this reason alone, it would have been most convenient to write the dissertation in Danish, but because the recipients of the analysis is an international forum, the language of the thesis is English, and not Danish or Greenlandic.

It is a startling fact that little information on Greenland is available in languages other than Danish. The first chapters in particular aim to describe the background in order to explain the nature and the stage of development of the present law applying in and to Greenland, as well as the legal status of Greenland. Because the dissertation has a rather wide span with respect to legal issues, it tends in some places to be a little superficial; this is redressed somewhat by references in the footnotes.

It has been a highly difficult task to pursue the two conflicting purposes of the

presented work; the creation of a work of academic quality and the presentation of usefull legal information, or in other words; the writing of an usefull academic book. The readers are asked to forgive the places where the work fails in the chasing of one or both of the purposes.

The final deadline for the collection of material and updating was June, 1991.

I am grateful to the members of the examining board and in particular to professor Terence C. Daintith (Florence and Dundee, Director of the Institute of Advanced Legal Studies, London) for his valuable comments. Also professor dr.jur. Peter Germer (Aarhus) has been helpful.

I am very much obliged to the European University Institute (Florence), the Institut for Privatret (Aarhus), the AIW-Institut (Frankfurt) and the Scandinavian Institute of Maritime Law (Oslo) for use of their facilities, as well as for providing library material for my research. Also thanks to the partners and members of staff of the law firm of Koch-Nielsen & Groenborg, Copenhagen, for their encouraging interest in the project.

Thanks to Mr. Paul Styles for linguistic assistance and the computer staff of the European University Institute for technical assistance. Financial assistance has been provided as a three year research grant from the Danish Ministry of Education, supplemented by a three month grant from the Danish National Council for Social Sciences Research.

DK-2950 Vedbaek, July 1991.

Frants Dalgaard-Knudsen

1. Introduction

The title of this thesis is "Mineral Concessions and Law in Greenland". This is a relatively covering title with respect to the content of the following pages. However, a more correct and extensive title would have been: "The constitutional, public and private law and the legal and factual situation of Greenland used as an example and as a projector for comparative and transnational discussions concerning the legal character of the rights and the authority vested by a sovereign state in a private company with respect to the extraction of hard minerals or hydrocarbons in sparsely populated areas of the territory".

Besides natural beauty, Greenland has further economic benefits to offer to mankind in the form of deposits of mineral resources.

However, before these resources can be exploited, there are numerous problematic issues to consider. A good question is, at several philosophic and economic levels; would it be worthwhile ?

It is obvious that several sorts of minerals are needed to maintain the world's economic development. The world market prices of the minerals in question are decisive for the mining companies and the oil companies when it comes to their decision of whether it is worth turning their eyes in the direction of Greenland. The costs and economic risks of the extraction of the minerals is, of course, also decisive for the companies.

The question of whether extraction activities are worthwhile is also decisive for those who are already benefitting from the natural environment and the other resources in Greenland, namely for the inhabitants and for their economically responsible government. The question for these parties is whether the pay–off from the activities compensate for the administrative and social costs, and for the potential disturbance and economic losses.

In particular, environmental considerations should be taken into account because the Arctic climate of Greenland entails a highly fragile environment, in which the nature itself is not fully capable to absorbe the mistakes of man. In Antarctica, the environmental considerations have entailed the adoption of international agreements, which hinder the exploitation of mineral resources in Antarctica. For the time being nations of the world have agreed that the world must manage without the mineral resources of the sourthern pole. It is not unlikely at all that international political powers for environmental reasons would be of the opinion that exploitation is not worthwhile in Northern Greenland.

Possibly, the world would be better off by paying a higher price for lower grade minerals from other places. However, that discussion is above the target of the merchantil–istic and jurisprudential approach of this study.

The companies and the inhabitants and their government thus have a common objective in the rise of the market prices and the decline of the costs of the direct technical extraction work. But they have diverging objectives in relation to the distribution of the gross–profit. In fact, the State and the companies in the exploitation sector have opposite objectives in relation to central aspects of the exploitation ventures; for instance: national sovereignty vs. economic freedom; fiscal interests vs. cost minimization; development planning vs. investor autonomy; transfer of labour intensive technology vs. imported capital intensive technology; flexibility of contractual relations vs. stability with precise commitments[1]. Actually, these economic conflicts exist under any type of structural arrangement, which is made between the state and a private company.

When a specific mining project has been set up under specific legal frames, the frames or the limits of the objectives have also to be set. To a high degree, the state party in such arrangement has determined the limits of the framework by means of choosing the legal form of the arrangement and the entire set–up at the general level, before a conflict with a specific mining company occurs. The objectives and conflicts of the kind and at the level mentioned in the section afore are basic, and the diverging objectives will exist under any type of legislative or concessional mining regime. The conflicts always exist, be it under joint ventures, state consultancy contracts, permits given by sovereign decrees or land leases.

However, both parties also know that ever since agreements have been made, one party tends to become less cooperative if the other party gains too much at the expense of the first party, in all aspects of the arrangement.

This research offers no predictions about future fluctuations in world market prices[2].

---

[1] Cf. Waelde, Thomas (1979): "Functions of the contract and the negotiation process" chapter 5 (at pg. 150) in Kirchner et al (ed)(1979): "Mining ventures in developing countries" Vol. I, Metzner, Frankfurt a.M. (1979).

[2] As examples, see Thompson, William F. et al (ed)(1985): "World Energy Markets: Stability or cyclical change" International Association of Energy Economists, Westview Press, Pennsylvania (1985), Mikesell, Raymond F. et al (1987): "The world mining industry: investment strategy and public policy" Allen & Unwin, London (1987) and Hawdon, David (ed)(1989): "Oil prices in the 1990's" Macmillan, Basingstoke

Neither is it an estimate of the sociological and environmental costs in Greenland in the future development[3]. Rather, this present contribution to science is more basic from a lawyer's angle of view.

As a starting point the outside spectator with interest in minerals might ask: Where are we looking and what are we looking for? Whom should we look for and look out for, if we find anything of interest, or more precisely, whom may we enter into an agreement with?

To reach a sensible agreement, one must know the identity, the thoughts and the objectives of one's counterpart. It is thus one of the objectives of this research to identify one of the parties, namely the governmental system and to identify the position of this party. It is thus a purpose in itself to describe the background of the administrative regime, because this description discloses how secure the foundation of the regime is and how the regime works and develops.

Before we can fully appreciate the administrative regime's dealings in relation to resources, we must first examine the background. In particular, we need to recognize the extent to which the administrative regime is already committed, explicitly or implicitly, by means of agreements and understandings with powers outside its full control such as neighbouring countries; supranational powers; opposition groups among the inhabitants; and opposition groups within the administrative regime itself[4].

The answers to these issues are to be found in history, in constitutional and administrative law, in international treaties and international law. Through an analysis of these issues one reaches a point of essential interest to the parties: The avoidance of misjudgments of the positions of the parties, and economic losses caused by misjudgments.

(1989).

[3] For examples, see Hertz, Ole (1977): "En oekologisk undersoegelse af minedriftens virkninger for fangerne i Uvkusigssat" Kragestedet, Vedback, Denmark (1977).

[4] On background of the Aminoil award, 21 ILM 976 (1982), Tschanz concludes in general that there is a need among foreign investors "for a greater awareness of the fact that its counterpart is a State, which cannot be treated in the same manner as a private party, since the State is also the supreme protector of the general interest", see Tschanz, Pierre Yves (1984): "The contributions of the Aminoil award to the law of State contracts" 18 The Int'l Lawyer 245 (1984).

On the one hand, the government party must consider the risk of involvement with a reckless counterpart who virtually rapes the environment and a generation of the labour force and leaves the government with the responsibility for undoing the damage.

On the other hand, the private party must consider the risk of nationalization of a successful exploitation venture or, at least, subsequent governmental pressure for a bigger share of the outcome. Recently, it has been concluded that the only clear lesson from recent oil disputes in the Middle East is that the contracts themselves, even if possessing the full panoply of internationalization and stabilization devices known to man, cannot be relied upon to eliminate risks of lawful expropriation (a fortiori of lesser interventions) nor to subject them to a predetermined regime of legal consequences[5]. However, the private party might reduce its risks by taking out insurance against political risks via the Multilateral Investment Guarantee Agency (MIGA) under the World Bank. The psychological effect apart, however, the legal discussion is unchanged because this measure only transfers the private party's risks and considerations to MIGA[6].

At the initial stage, one of the contract parties, the host country, may choose the contract form and thereby determine its own involvement in economic risks etc.[7] In Scandinavia and in particular in Greenland the predominant choice has been concessional arrangements[8].

Both parties may protect themselves against their risks by building up economic reserves in the initial phases of the exploitation adventure. The extent to which this is necessary brings the parties back to the initial question of whether a proposed and

---

[5] See Daintith, Terence C. (1986): "Mining Agreements as regulatory schemes", at pg. 12, AIW-paper no. 6, International Conference Mining Ventures in Developing Countries, Frankfurt a.M. (1986).

[6] The MIGA Convention and sample documents is reprinted in 28 ILM 1233 (1989) with an introductory note by Lorin S. Weisenfield. See also about MIGA, Waelde, Thomas (1987): "Investment policies in the international petroleum industry: Responses to current crisis" in Khan (ed): "Petroleum Resources and Development" Belhaven Press, London (1987) (esp. pg. 43 ff).

[7] See the analysis of Blitzer, Charles R. et.al. (1984) "Risk Bearing and the choice of contract Forms for Oil Exploration and Development" 5 The Energy Journal 1 (1984) and also McGill, Stuart (1984): "Issues for Governments when formulating Mineral Agreements" 8 Materials and Society 115 (1984).

[8] Cf. chapter 11 below.

promising exploitation project is worthwhile considering.

It is a fundamental question[9] whether there is a viable alternative to the near permanent state of antagonism and distrust that menaces relations between many host governments and transnational corporations. On the one hand, any perceptive observer cannot but notice a general disenchantment on the part of the developing countries with the basic legal concepts underpinning the old international economic order, a feeling that induces powerful for governmental intervention to remove the inequities of the system. On the other hand, it is equally evident that transnational corporations have become increasingly sensitive to what they consider unpredictable governmental intervention in their legitimate business interests, a situation that gives the corporations a powerful incentive to maximize their returns and leave the host country at the earliest opportunity with little or no consideration for the long term developmental needs of that country.

The need to build up reserves – or gain early stage profit – may be reduced in only one manner: On the basis of a shared confidence between the parties. Confidence includes recognition of both the long-term developmental interest of the host country and the legitimate financial and business interests of transnational corporations. Confidence is achieved through information[10] and through knowledge of the rules of the game, as well as proof of correct conduct in the past.

A second objective of this research is thus to inform about the rules applying to the exploitation of non-living resources in Greenland: at the primary level this concerns the rules directly applying to the exploitation activities; but at the secondary level of information, one must also consider all the other facets of the legal system which may appear tangential to the exploitation activities; for it is these which regulate secondary or supporting activities.

The rules of the game, the law and legislation, have been provided over time by the governing regime. It is one of the tasks of government to provide and to change law when

---

[9] This is the concluding question raised by Asanté, see Asanté, Samuel (1979): "Restructuring transnational mineral agreements" 73 Am.J.Int.L. 335 (1979).

[10] "Extensive gathering of information is part of the preliminary work of any negotiation" according to Waelde, Thomas (1979): "Functions of the contract and the negotiation process", chapter 5 (at pg. 165) in Kirchner et al (ed)(1979): "Mining Ventures in Developing Countries" Vol. I, Metzner, Frankfurt a.M. (1979).

required by changes in society.

This is one of the problems in connection with arrangements between a government, a state, and a private party, whether this concerns a permit, a concession or a contract. In such arrangements one of the parties, the state, holds another remedy, which it could use if it were to regret parts of an arrangement with another party. This remedy is not included in the visible rules of the game. The government may change the rules of the game by passing Acts or other legislative norms, which affect and sometimes even regulate issues also included in the permits, concessions or contracts with the private parties. This is a different game at another level[11].

If the government in question has a record of intervention or tangential regulation without the consent of the private party; and if such action has been seen to be supported by the law and the courts of that country, then the rules of the game are unclear and confidence in the state party is undermined[12].

A third objective of this research is thus to establish an indication of the reliability of the governing regime. The lack of litigation, the age and the details of the law, the gradual development of the regime and the complexity of the procedures within the system may be seen as indications of the degree of reliability.

One way of cross-checking the reliability of the governing system is to see how the governing system and the laws it provides regard the legal character of the arrangements entered into with private parties. Permits, contracts and concessions are widely different legal documents. It is thus a fourth objective to reveal the legal character of the arrangements.

The disclosure of the character of the arrangements in the context of the character of the arrangements in other legal regimes facilitate the possibilities of the private party to compare and to make parallels with legal constructions already known by him from past

---

[11] At this level Bercusson concludes: "State ordering is based primarily on force, whereas most private ordering is based primarily on wealth. Each order also depends, to a much lesser extent, on respect ..... Until we can eliminate need, or until we can mobilize respect, we may have to live with force", see Bercusson, Brian (1985): "Economic policy: State and private ordering" DOC IUE 21/85 EUI Colloquium Papers, Florence (1985), pp. 82-83.

[12] However, Smith and Wells have observed that "investors who feel they are in a strong bargaining position show little reluctance to enter a country that has ushered out a recent weak investor", see Smith & Wells (1976): "Conflict Avoidance in Concession Agreements" 17 Harv.Int.L.J. 51 (1976).

experience in other parts of the world. The establishment of links with other legal constructions also increase the possibility of predicting the outcome of possible conflicts of interests under the arrangements[13].

Finally, the analysis of the Greenlandic situation and the focus on other legal systems may present the opportunity for a general or globally interesting lesson, which may be seen as a fifth objective; namely, to illustrate possible means of legal regulation of non-living resources in territories with "semi-independent" status, and the legal regulation in this respect in sparsely populated areas with severe climates. Hopefully, the analysis may also contribute to the international law of concessions.

If the central thesis of this dissertation can be phrased in one main postulate, it would be that Greenland is a long established, but modern, law regulated society, which, due to the mineral resources and the climate, offers vast possibilities of commercial ventures and risks, however, within stable legislative and contractual frameworks, which are well known legal constructions from Scandinavian and Continental law.

This postulate should be seen as an open question with many elements. It is the objective of this research to establish proof or the likelihood of the truth of this postulate. In doing so, we are examining a question that is of keen interest to Danish and Greenlandic society and more particularly to their economies. The question becomes of even wider interest when we realize the extent of the concern about world supplies of necessary raw-materials in the future. Of course the ultimate answer to the postulate is a yes. If this was not the case, the reliability of this research would be in a logic contradiction to the objective of it. The interesting feature is thus the contents of the various answers to the many elements of the postulate.

It is quite easy to state where we are looking and what we are looking for in the literal sense: such exposure is limited to the provision of information about Greenland in general and about the discovered sites of mineral deposits. However, such information is also a

---

[13] As further basic studies, see Daintith, Terence C.(ed)(1981): "The legal character of petroleum licences: A comparative study", Dundee (1981), Page, Alan C. (1982): "Transnational mining Contracts" at pp. 223-238 in Horn and Schmitthoff (ed): "The transnational law of international commercial transactions" Vol.II, Kluwer, Deventer (1982), Beredjick & Waelde (ed)(1988): "Petroleum Investment policies in Developing Countries", Graham & Trotman, London (1988)(Review in 84 Am.J.Int.L. 957 (1990)), Mangone, Gerard J.(ed)(1977): "Energy policies of the World", Elsevier, New York (1977) and Jaenicke et al (ed)(1988): "International Mining Investment", Metzner, Frankfurt a.M. (1988).

precondition for understanding the severe and arduous circumstances of exploitation activities and of civil life in Greenland. Therefore, the following chapter is concerned with the physical appearance of Greenland.

One of the objectives of the research is to identify the party which enters into agreement with the mining companies, and to identify the position and power of this party. The identification of the inhabitants and of the governing regime, and the relation between the inhabitants and the governing regime require a discussion of the historical development and disputes and rights, which may help explain the present situation. Chapter 3 attempts to provide such a background history.

This line is followed up in chapter 4, section 3 and 4, where aboriginal rights and rights of imperialism are confronted. This discussion leads into a discussion of the character of the present semi-independence, and the un-likelihood of full independence. Thereby the position of the present governing regime and its strength is enlightened. The strength of a regime is also of major importance when it comes to an estimate of its credibility, which was one of the other objectives of this research.

The outward position of the regime, its limits and its recognition, outside Greenland, is discussed in a historical light in the first sections of chapter 4. The issue of extension of sovereignty into the sea and especially to the subjacent continental shelf is considered in chapter 5, which include details of the legal problems of sovereignty relating to each and all of the waters around Greenland. Chapter 6 deals with the position in relation to a supranational power such as the EEC. Such external recognition is also part of the basis for asserting the reliability of the system.

Chapter 7, on administrative competence, further supports the credibility and also describes the administrative system, as an introduction to chapter 8 on law and legislation in general. Chapter 9 provides the details of legislation applying directly to the relationship between the regime and the mining companies. Chapters 7 and 8 are intended to provide general information on the law regulating exploitation activities indirectly or at the secondary level, whilst chapter 9 provides a guideline of the directly applicable legislation at the primary level.

Besides fulfilling the objective of information, these chapters contribute to the impression of the reliability of the system, and also constitute an introduction to the fourth objective, namely the disclosure of the legal character of the exploitation arrangements.

Knowledge of the legal system is a prerequisite for using it.

Chapter 10 follows on the line of chapter 5, which enlarged the focus of this research physically by means of considering the situation off the shores of Greenland. In chapter 5 the offshore area was delimited by legal means. Chapter 10 is concerned with the legal regime applying within the offshore area and to some degree attempts to consider the same issues as chapters 7 – 9 and with the same objectives; however, this time only with respect to offshore law. This includes discussions of competing rights and supranational law, an overview of the administrative system and the directly applicable Acts, and details of the law in general applying to activities off Greenland.

Having established likelihood of the reliability of the legal regime in various respects, the issue at stake is then the legal character of the legal constructions which act as the direct frameworks for exploitation activities.

The legal character of such arrangements is quite different in the legal regimes around the world. The law in Greenland is based on Danish law, and Danish law draws on the common and traditional heritage of Scandinavian law. However, in Scandinavian law the legal character of concessions is not at all clear. Against the background of the legal situation in various parts of the world, chapter 11 attempts to clarify the legal character of exploitation concessions in Scandinavian law and especially in Danish law. The transnational experiences touched upon in chapter 11 also provide a basis for conclusions of a more general character.

The discussions in chapter 11 of sovereign and contractual elements in concessions provide a basis for a description of the details of the older concessions in Greenland. This is the aim of chapter 12 which thereby provides a picture of the evolution of the concessional regime in Greenland.

Chapter 12 leads to the discussion of the details of rights and obligations included in the two youngest exploitation concessions in Greenland. In chapter 13, the details of the Greenex lead and zinc concession and the Jameson Land hydrocarbon concession are analyzed, and to some degree compared with the rules of the second round model license applying to the exploitation of hydrocarbons in the Danish sector of the North Sea.

The objectives and aims of this work, as described in this introduction, may be found and recognized in the research presented through out the following chapters. The exact lines of thinking, however, are picked up in chapter 14, which contains the overall parallels

and conclusions in relation to the presented research and the objectives of the thesis.

2. THE PHYSICAL APPEARANCE OF GREENLAND

This chapter describes the situation of Greenland: its location and characteristics. Some understanding of its situation is a prerequisite since exploitation activities are hampered by and have to contend with various diffficulties. These may be caused by ice disturbing the transportation and frost causing difficulties to construction work, as well as making open air activities unpleasant to humans. Included in this chapter is also a description of the mineral resources discovered until now, for the purpose of exemplification of the mining possibilities.

2.1. GEOGRAPHY AND CLIMATE

2.1.1. Location

Covering 2.175.600 square kilometres (840.000 square miles) Greenland is the largest island on earth[1]. In terms of location Greenland is a part of the North American continent. It is separated from Canada's Ellesmere Island by the relatively shallow Nares Strait, which is about 22 kilometres (14 miles) wide at its most narrow point. From Iceland Greenland is separated by the 290 kilometre (180 miles) wide Danmarks Strait, and from Spitzbergen (Svalbard) by almost 400 kilometres (250 miles) of sea.

The southern tip of Greenland, named Kap Farvel, stretches as far south as Labrador, The Shetland Islands and Stockholm. Its northern tip, Kap Morris Jesup, is in the region of 740 kilometres (460 miles) closer than any other landmass to the geographical North Pole. From north to south the island measures 2670 kilometres (1660 miles).

2.1.2. Sea and coastal line

From Labrador and Baffin Island, Greenland is separated by the Labrador Sea and its northern extension, the Davis Strait. In the south the sea is more than 4000 metres (13.000 feet) deep, while in the north it is considerably less. Baffin Bay is as deep as 2000 metres (6500 feet).

To the north is the Arctic Sea, and there the coast is flat with shallow water extending

[1] Considering Australia a continent.

far out to sea[2]. At the east coast the sea some places is more than 3000 metres (10.000 feet) deep, even relatively close to the shore.

Showing the result of glacial modification, the coast land is rugged, rocky and deeply indented by fjords. The outer coast is in many places dotted with islands, and there are also reefs. There are numerous natural harbours, but with some tidal movement.

2.1.2. The icecap

85 % of Greenland is covered by a massive icecap, which covers all but a narrow coastal strip of varying width. The icefree coastal strip is non-existent in places, where outlet glaciers reach the sea. In appendix 1 a map of Greenland shows the icefree parts.

The Greenland inland ice reaches a height of 3300 metres (11.000 feet) above sea level. The icecap takes the form of two domes, a northern and a southern. Here and there, especially close to the coastal line, mountain peaks reach up through the icecap. The highest mountain peak in Greenland is 3733 metres (12.000 feet) above sea level. In the inner parts of Greenland, the base of the icecap reaches down to 250 metres (800 feet) below sea level[3].

2.1.4. Ice at sea

The outlet glaciers from the icecap disgorge icebergs directly into the sea. The icebergs calved from outlet glaciers are a danger to shipping along Greenland's coasts, but they are not the only form of ice hazard.

The main outlet for waters from the Arctic sea is between Northeast Greenland and Spitzbergen (Svalbard). This outflow brings a great amount of pack-ice down along the east coast of Greenland. The pack-ice drifts down with the East Greenland Current, joining the warmer Irminger Current before rounding the southern tip of Greenland, and proceeding up the west coast. The pack-ice blocks the shipping in East Greenland most of the year. This effect, however, is felt only on the East and the Southwest coast.

---

[2] Or rather, so to say, shallow ice extending far out to sea.

[3] In some places the level of the soil is below sea level, probably because of the pressure caused by the weight of the ice-masses.

Most other ice-blockage in Greenland results from the third main type of ice, winter ice, which increases in influence as one proceeds northwards[4]. In the mid-south parts of West Greenland only the inner parts of the fjords and bays freeze each winter. In appendix 2 is a table showing how the ice affects the shipping season in Greenland.

2.1.5. Climate

Greenland's climate is arctic, except for a small area of sub-arctic climate in the extreme southwest. There is no tree growth and agriculture is virtually non-existent; although there is limited sheep-raising in the extreme southwest areas. Also here are forage crops grown, but not always in sufficient amount for the entire winter-requirement.

In southern Greenland, where air masses from the Atlantic are dominant, the result is unsettled stormy weather. In coastal areas fog and rain are common. Inland, however, the climate becomes more continental.

In general, the climate of Greenland becomes colder and drier towards the north. North Greenland in winter is usually under the influence of polar air masses most of the time, thereby enjoying many clear, calm but cold days.

The largest ice free areas are to the north and the east. The annual snowfall is so small, that sledge-driving in the north is only possible at sea. The lack of snowfall promotes desert-like conditions, and the powerful storms in the area give a wind erosion similar to that found in the Sahara. This is a very typical radiation climate[5]; thus as in other desert areas one finds the earth's surface covered with salt.

2.1.6. Permanent frost

With an arctic climate and low winter temperatures the soil in most places is frozen deep and it is only the top layers of the soil that thaw during the summertime.

Permanent frost or permafrost means that the temperature of the subsurface-soil or -rock is below 0 degree Centigrade all through the year. In Greenland the permanent frost

---

[4] There is also a fourth type of ice, called west-ice, which occurs at sea when one approaches the Canadian side of the Labrador Sea and the Baffin Bay.

[5] A radiation climate is one where water is pushed out of the soil as the soil undergoes internal change.

goes down to 500 metres (1600 feet) below surface level.

The permafrost gives rise to complicated water phenomena, which can make the soil move; the frost also causes severe difficulties to construction work; for instance when constructing, it is important to try to keep the ground temperature constant.

2.2 GEOLOGY

2.2.1. Fold mountains

The formation of ranges of fold mountains[6] has played a very important role in the development of the geology of Greenland. All known geological earth ages are represented in the mountains of Greenland. The very oldest rock formations around Godthaabfjord came into being some 3,6 billion years ago. Large parts of both West and East Greenland consist of younger formations of fold mountains. The oldest complex, consisting of rocks between 3,6 billion and 2,2 billion years old, forms a belt straight across Greenland underneath the inland ice. On the westcoast it appears between Sondre Stroemfjord and Ivigtut, while on the eastcoast it is south of Angmagssalik. South and north of this belt there are younger precambrian areas that are around 1,7 billion years of age.

While West Greenland and southern East Greenland's younger precambrian fold mountains are relatively old, there is also in East Greenland a dominating, but much younger range of fold mountains, formed some 400 million years ago. This is the so-called Caledonian range – also very important in the development of the mountains of Norway and Scotland. It is found in North Greenland and in East Greenland. But in the northeast corner of Greenland, parts of another range of fold mountains are present. This is the so-called Carolinian range, formed approximately 1 billion years ago. The ranges of fold-mountains are shown in appendix 3.

There are layers from many different time periods in Greenland's fold mountains. However, there are also rocks that were not been involved in the fold range formations, but they are not very dominant. The range of fold mountains characterizes the main physical features of Greenland today.

---

[6] Fold mountains are formed by crust tilting.

The precambrian fold ranges, that are found as gneissoid rocks[7] almost all over West Greenland and the southern part of East Greenland, also make up the main part of the land covered by the inland icecap. One can say that there is a Greenlandic crust plate on three sides surrounded by other ranges of fold– mountains. The Greenlandic crust plate is a part of the Canadian crust plate. This is not only of academic interest, but also helps predict the possibilities of formation of minerals in the Greenland mountains, especially seen against the background of the previous large scale exploitations in Canada.

In other parts of the world bedrock areas provide good conditions for mineral development. For this reason, the geological surveys in the last decades have been concentrated in these areas of Greenland that were almost unexplored up till the Second World War. Minerals can be found in the bedrock as an integrated part of the bedrock itself. This has been the case with the iron–ore deposits at Isukasia, several perodite deposits and the chromium deposits at Fiskenaesset, where ruby and diamond have also been found. It has also been the case with the leadgalena–zincblende deposit at Marmorilik and graphite in gneiss in various localities. But the cryolite at Ivigtut and the uranium–ore at Kvanefjeld at Narssaq is in younger magma–formations, which in a molten state was forced down in the bedrock. The Ketilidians of South Greenland are characterized by a number of alkaline intrusions from the so–called Gardar period. The most known ores are Ivigtut with cryolite and Ilimaussaq at Narssaq with uranium, thorium, beryllium, zirconium and a large number of other rare elements.

2.2.2. Sediments

Sediments[8] from the eldest to the youngest Palaeozoic period can be found in several places. In northern Greenland a belt of old Palaeozoic rock runs from east to west. Here sandstone, shale and dolomite are dominant. In East Greenland the Palaeozoic sediments in Elenore Bay are 15 kilometres (9 miles) thick.

The sediments from the middle ages of the earth, the Mesozoic, mainly appears in East

---

[7] Gneissoid rock is coarse grained metamorphic rock composed of quartz, feldspar and mica, of a structure more or less slaty.

[8] From periods where global seas were covering the land.

and West Greenland. The East Greenland sediments are very rich in fossilizations. The sediments in West Greenland, especially at Nugssuaq, have been subject to the search for oil. Studies of plant fossilizations in the sediments at Nugssuaq were one of the reasons for pointing out the potential offshore oil-sectors. The presence of an organic inflammable material called bitumen has been known for many years, because of the phenomenon of burning rocks at Nugssuaq. At the Disko Island and also at Nugssuaq, coal has been exploited.

At the beginning of the tertiary period there was volcanic activity both in West and East Greenland. At the end of the tertiary period, approximately ten million years ago, the Greenland icecap began to be formed.

2.3. MINERALS AND MINES[9]

The aim of this and the next section is to exemplify the mining possibilities in Greenland. In this section are mentioned only minerals which already have been subject to exploitation, while other minerals are dealt with in the section next.

Cryolite

Cryolite is a very rare mineral from the Gardar period. The mineral, consisting of natrium, fluor and aluminium, was exploited in Ivigtut in southwestern Greenland from 1850 to 1962. Increased world market prices and improved technology made it possible to reopen the quarry 1985-1987 in order to utilize remaining ore with lesser concentrations of cryolite. All together some 3,5 million metric tonnes were exploited from the one open-surface quarry.

Leadgalena-zincblende

Leadgalena-zincblende was exploited in Mesters Vig, East Greenland 1956-1963. The

---

[9] Sections 2.3. and 2.4. are heavily drawn on the following articles of K. Ellitsgaard-Rasmussen, director of the Greenland Geological Survey; Ellitsgaard-Rasmussen (1970): "Oekonomisk Geologi" 30 Trap 51, Ellitsgaard-Rasmussen (1978a): "Geologi og Mineraludnyttelse" Bogen om Groenland 22ff, Ellitsgaard-Rasmussen (1978b): "Generel orientering /statusrapport vedroerende raastoffer i Groenland" Julianehaabkonferencen, Vigh (1978): "Generel orientering /statusrapport vedroerende raastoffer i Groenland" Julianehaabkonferencen.

ore contained 12 % lead and 10 % zinc, Some 58.000 metric tonnes of leadgalena concentrate and 74.000 metric tonnes zincblende were exploited.

At Marmorilik in Umanak district in West Greenland exploitation started in 1972. The ore is found 600 metres (2000 feet) above sea level in Greenlandic marble, and it contains 16 % zinc, 4,5 % lead and 25 grams of silver per metric ton. For the last ten years approximately 30.000 metric tonnes of lead and 90.000 metric tonnes of zinc have been produced annually[10]. The deposit was exhausted in 1990.

Copper

All together 110 metric tonnes of copper were exploited in 1852 and between 1905 and 1914 at Nunarssuit, Southwest Greenland. The ore contained 5 % copper and a little bit of gold. In the same area, at a little island near Julianehaab, some 15 metric tonnes were exploited around 1850.

Graphite

This mineral appears in many places in Greenland. 6000 metric tonnes were exploited 1911–25 at Amitsoq in South Greenland. Graphite has also been exploited at Utorqait near Holsteinsborg and at Langoe near Upernavik in West Greenland.

Marble

Marble has been exploited 1936–1940 two places in Umanak district in West Greenland.

Coal

Exploitation of coal has taken place both in East and West Greenland; the latter mainly at Disko Island and at Nugssuaq. Greenlandic coal is not quite as good as good quality European coal. Exploitation has been going on for a number of years, but only with the aim of meeting local needs.

2.4. SOME FUTURE EXPLOITATION POSSIBILITIES

[10] According to United Nations: "Yearbook of industrial statistics".

The above listed minerals, which have been exploited in the mentioned sites, can also be found in other areas of Greenland, and other sites have already been discovered. Besides the above mentioned minerals, numerous of other minerals have been shown to exist in a number of locations. However, several, if not most, of the Greenlandic deposits are of a relatively low quality, and the exploitation of many common types of minerals must therefore await higher market prices.

Iron

Iron ore deposits are recorded in several places in Greenland. A particularly large deposit has been discovered at Isukasia on the border of the inland ice, east of Godthaab in West Greenland. Being 1,5 kilometres (1 mile) thick, the deposit is estimated to contain 2000 millions metric tonnes with 32 % iron in the ore. This deposit is equivalent to 0.7 % of the exploitable reserves of iron in the world. It is also equivalent to five years total consumption in the European Commonmarket Countries. More than half of the iron used here is imported. The iron ore is exposed 1200 metres (3800 feet) above sea level. Part of the ore is covered by the inland icecap, which poses quite a problem. Another problem in connection with this deposit is the distance of 150 kilometres (90 miles) to the loading port. There is no local labour, and the supply of energy for the exploitation is also a problem.

Molybdenum

This mineral was found in Werner Mountains south of King Oscar Fjord in East Greenland. At this site there are an estimated 120 million metric tonnes of ore with 0,25 % molybdenite. This is equivalent to 3 % of the known molybdenum reserves in the entire world[11]. Here too there are problems of energy and transportation.

Gold and Platinum

In 1990 exploration carried out by Platinova Resources Ltd. and Corona Corp. has proved the presence of gold and platinum at Kap Edvard in East Greenland. At the surface, the ore contains 6.5 grams of gold per tonnes. Further down there are 1.6 grams of gold

[11] Compare the table of World Raw Mineral Reserves in Eurostat: "EC Raw Materials Balance Sheets", Bruxelles, 1985.

and 3.4 grams of platinum per tonnes of ore.

Chromium

Chromite is found south of Nuuk–Godthaab at Fiskenaesset in West Greenland. The ore in this place holds equal amounts of iron and chromium. There is an estimated 2,5 millions metric tonnes of ore in the deposit.

Uranium

The presence of uranium has been discovered in several places in Greenland. At Kvanefjeld at Narssaq in South Greenland a deposit with 350 grams uranium per tonnes of ore has been found. From the ore approximately 43.000 metric tonnes of uranium can be produced. Several other elements have been found near Narssaq, for instance niobium, zirconium, thorium and beryllium.

Hydrocarbons

The presence of oil has not yet been proven in Greenland so far, but there are several potential areas. The Nugssuaq area in West Greenland is thought to have some potential, as well as all of northern Greenland. In East Greenland there are also possibilities. Large scale exploratory work was carried out in Jameson Land during the 1980's, and the presence of oil is almost certain. But the drop in oil prices in the late 80's has caused a postponement of the necessary investments in the development of the wells.

Final remarks regarding the potentials

It has to be said here that most of Greenland's territory has not been intensively explored by professional geologists, and much of the subsoil is completely unexplored.

To illustrate this it is worth mentioning that the official EC statistics of EC Raw Materials explicitly exclude Greenland in the balances of production and reserves; Also in relation to global figures[12]. However, the reason might be that the Greenlandic deposits are considered not to be suitable for commercial production.

The geology of Greenland, however, appears to be less interesting to the mining

---

[12] See Eurostat: "EC Raw Materials Balance Sheets" , Bruxelles, 1985.

companies than the geology in many other places of the world. It has a self-strenghtening effect to the interest of the companies, when exploitation in a given area has proved to be commercially advantageous. The presence of commercial exploitation activities up-rates the geological potential.

Of the above mentioned mineral deposits several have been discovered by pure coincidence, most of them in the inhabited parts of Southwestern Greenland. In other words, the wide open spaces, and particularly the subsoil of Greenland have to be considered as virgin frontier areas.

3. A BRIEF BACKGROUND HISTORY OF GREENLAND

In this chapter it is intended to provide some information concerning the evolution of the Greenlandic community. This gives some factual background on the constitutional development, as well as on the issues of international law, discussed in the following chapter. This outline of the historical development of the habitation also gives an impression of the identity of the inhabitants, and explains some reason for the present system of local autonomy within the Danish Realm. The aim is also to promote some understanding of the particular problems of identity, that have arisen as a result of the rapid change from a stone-age culture to a western- world society.

3.1. PALAEOESKIMOS[1]

3.1.1. Independence I

About 4000 years ago the first humans appeared in Greenland. These were the so-called Independence I people. Coming from the North American islands, this tribe proceeded eastwards along the northern coasts of Greenland. They are traced in Peary Land, and it is known, that they mainly made their living by hunting musk-oxes. The last trace of this tribe is from around 1700 B.C.

3.1.2. Independence II

In the period between 700-400 B.C. other tribes, whom one refers to as the Independence II culture, peopled the same northeastern areas of Greenland. Using weapons of stone and bone, members of these tribes were hunting musk-ox and reindeer.

3.1.3. Sarqaq-culture

Another culture, called the Sarqaq-culture, prevailed in West and Southeast Greenland from about 1400 to about 700 B.C. These people are also assumed to have migrated from America, through the northwestern corner of Greenland. Belonging to a bone-and-

[1] Most of what is known of the Palaeoeskimos is from archaeological research carried out in this century. The information here is from the history works listed among the references.

stone–age culture, these people hunted reindeer with bow and arrow. They also hunted seal and fished in rivers and lakes.

3.1.4. The Dorset–culture

The Dorset–culture was centered on the shores around Foxe Basin north of Hudson Bay in Canada, and covered a span of time from 700 B.C. to A.D. 1300. During this period people from the Dorset culture came into Greenland through the northwestern gateway. Greenland was completely uninhabited for about half a millenium between the Sarqaq–– culture and the Dorset– culture. This latter culture occur in West and Southeastern Greenland 100 B.C. – A.D. 100. Again around A.D. 700–900 these people could be found in the middle parts of West Greenland; there were also some in an area of Northeastern Greenland A.D. 900–1100[2].

The Dorset people adapted themselves to walrus–hunting, and were also good at fishing. Hunting on land followed the normal pattern, although the Dorset hunter did not possess the bow and arrow.

When the Dorset people in Greenland disappeared, their Canadian relatives retreated into the interior of North America and further outwards, probably driven by climatic changes.

3.2. GREENLANDERS AND INUITS

3.2.1. The Nordic Greenlanders[3]

The first time Europeans came to Greenland was around the year A.D.875. It was Gunbjoern, son of Ulf Krage, from Iceland, who drifted to the coasts of East Greenland as a result of stormy weather.

In 982 Erik Thorvaldssons, with the nickname "the Red", from Iceland made a

---

[2] The Dorset–culture is also known from Inuit legends. More than likely, however, because Inuits migrating from Canada have brought their legends with them. In Greenland the Inuits however might have met the Dorset man in the northern most areas.

[3] About the Nordic Greenlanders, see Gad (1970a): "History of Greenland", vol. I, and Gunnarson (1978): "De islandske Sagaer", vol. III, chapter VI.

successful expedition to rediscover this land, which he named Greenland. Back in Iceland Erik started campaigning to make a settlement in Greenland, and in 986 some 700 persons joined him and emigrated, bringing cattle and other necessities on board 25 ships.

During the following years settlements were made in the southern parts of Greenland and up along the Westcoast, especially around what is now Julianehaab and Godthaab. But the Greenlanders also reached as far north as Upernavik, where a runic writing, dated May 2nd 1333, has been found.

For about 500 years the Greenlanders were present on the Westcoast. Some 300 farms, 16 churches and 2 monasteries were erected between the coasts and the inland icecap.

In the year 1000 Leif Eriksson, son of Erik the Red, discovered North America by accident while he was on a journey from Norway to Greenland. He named the land "Vinland". In 1003 an expedition left Greenland to explore Vinland, and after three years it finally brought home lumber and rare skins. The colonization of Vinland was however given up, because of the combative inhabitants. But many voyages to get lumber were made; the last known was in 1347.

On his return to Greenland via Vinland, Leif Eriksson also brought christianity. From 1124 Greenland had its own bishop.

From 1261 the Greenlanders paid taxes to the Norwegian king, for which he in return undertook to maintain the shipping connections. This worked for some time, but a hundred years later the connection became more irregular, with lapses in between.

3.2.2. The Greenlanders and the Palaeoeskimos

When the Nordic Greenlanders arrived in West Greenland, the Dorset Eskimos had already left. All of West Greenland was deserted. Where they settled, there had not been Eskimos for more than 800 years. Further north the Eskimos had been living until just a century before the arrival of the Greenlanders; for their part the Greenlanders never settled so far north.

Although never encountering the Palaeoeskimos, the Greenlanders however did find vestiges of their presence such as many settlements as well as remains of skin-boats and

stone–implements[4]. These archaeological indications of an earlier population were probably from the Dorset period.

3.2.3. The Neoeskimos – Inuits[5]

Around A.D. 1000 a new bone–and–stone–age culture came to Greenland from Alaska. This was discovered in the northwestern corner of Greenland, around Thule, and it is therefore named the Thule–culture. This culture was quite different from previous cultures. The inhabitants were very energetic and combative people who made their living by hunting the whale. The kayak, the sledge with dog teams, and large harpoons were used. The Inuits presumably did not interfere with the people from the Dorset–culture[6]. Though they did learn the skills of sealing and inland hunting, but not necessarily from them.

In the 12th century the Inuits started moving southwards, and their culture developed, and became what is known as the Inugsuk– culture. From this time the culture also became a little influenced by contact with the Greenlanders[7], but remained however a stone–age culture. Up till around 1860 there was a steady migration of Inuits from Canada to Greenland.

Around 1500 the Inugsuk–culture was practically the only culture, and it had spread along all the coasts of Greenland. These Inugsuk Inuits are some of the ancestors of the Greenlandic Inuits today.

3.2.4. The Greenlanders and the Inuits

Comparisons of skulls from the Middle Ages show no relationship between the

---

[4] According to Are Frodes Islendingabok, written about 150 years later. About the life of the Greenlanders, see the novel of Jane Smiley (1988): "The Greenlanders", Fontana, Glasgow, 1988.

[5] Inuit is the term chosen by the Eskimos to refer to a member of their race, cf. Gad (1970a) pg. 172. Also, the Eskimo international organization has chosen the name "Inuit Circumpolar Conference".

[6] They presumably never met the Dorset people in Greenland. However, among the Inuits in Thule there were legends about some inland people called the Torngits. These probably were the Dorset people, but according to the legend, they were driven southwards, cf. Gad (1970a) pg. 22, and footnote 2 above.

[7] Small wooden sculptures of Europeans made by Inuits have been discovered in archaeological sites.

Greenlandic race and the Inuit race[8]. There is no evidence of peaceful coexistence between Greenlanders and Inuits. Instead both Inuit legends[9], and Norwegian[10] and Icelandic[11] written sources speak of fights and battles.

Moving southwards the Inuits reached the northern Greenlandic settlements, and around 1350 no survivors were reported there[12]. In 1379 the Inuits attacked the southern settlements for the first time. Meanwhile in Europe, news from Greenland came more seldom. There is evidence of a shipping connection in 1410. In 1492 the Pope appointed the last bishop, but he probably never reached Greenland.

In the 1530's a Greenlandic shipwreck was found at an Icelandic shore[13]. Around the same time, it is told, some tradesmen by accident came to Julianehaab in Greenland[14]. All they found was the recently deceased body of a man on the ground. The man was dressed in skins and had a knife of iron in his hand. He might have been the last Nordic Greenlander.

Battles with inuits and hostile european sailors, diseases, climatic changes and isolation all were factors which contributed to this sortie of the wiking population.

3.3. 1500 - 1900

---

[8] See Balslev Joergensen (1970): "Antropologi" 30 Trap 290.

[9] See for example Rasmussen (1981): "Inuit Fortaeller", vol. I, pg. 103ff.

[10] According to the description of Ivar Bardarson, cf. Gad (1970a) pg. 141 and 147.

[11] The Icelandic chronicles and even a papal letter of September 1448 to the Icelandic bishop, cf. Gad (1970a) pg. 157f.

[12] See footnote 10 above.

[13] Believed to be Greenlandic because it was treated with seal blubber, and it had runic inscriptions, cf. "Groenlands Historiske Mindesmaerker", vol. III, pg. 469.

[14] The Icelandic tradesman Jon Groenlander, on board a Hamburg vessel, cf. Gad (1970a) pg. 164.

3.3.1. Voyages of discovery[15]

From just before 1500 till after 1600 a large number of expeditions were sent up to explore the North Atlantic and the coasts of Greenland. Portuguese and English explorers tried to find a northern route to India, while the Danish king sent out expeditions to find both valuable minerals and the Nordic, Greenlandic taxpayers, who were still believed to live there. The Greenlanders were not found, but the various explorers did conduct some small scale trading with the Inuits, and even kidnapped some of them. During this period the first maps of Greenland were made.

3.3.2. Europeans whaling

Beginning in the medieval time and lasting until the last century there was a demand for blubber for lighting in Europe. From around 1650 English, French, Dutch, German, Norwegian and Danish whalers were operating in the waters of Greenland. In West Greenland the whalers also established land-bases, from where they traded a great deal with the Inuits. One impact of the trading activities was the arrival of unmistakable European features among the Inuit issue[16].

3.3.3. The re-colonization

In 1721 three vessels left Norway under the leadership of the priest Hans Egede, who brought his family with him. His aim was to find the Greenlanders and to convert them to the Lutheran church. Disappointed that he did not find the Greenlanders, he took up his mission among the Inuits in West Greenland. It took two centuries to convert all Inuits to christianity.

A Danish governor was appointed in 1728. In the middle of that century a considerable amount of colonial settlements were established in West Greenland. Today these are the major towns of Greenland. In 1740 trade was monopolized, and from that time the colony was closed to foreign traders. The Royal Greenland Trade Department took over the monopoly in 1776.

---

[15] Cf. Gad (1970a) chapter 6.

[16] Gad (1970b): "Fra Nordbotidens slutning til Nutiden 1500 - 1950" 30 Trap 352 (355f).

The first important Greenland Act was adopted in 1782, regulating whaling, trade, labour treatment and penalties. It was made clear, that the governors stayed there to protect the inhabitants and to control trade.

In the subsequent century, schools, colleges and hospitals were erected, and newspaper publishing began. By the end of the century, a hundred years ago, southern East Greenland had also been explored, and the hope of finding surviving Greenlanders was abandoned.

3.3.4. The Inuits

In West Greenland much miscegenation took place, first caused mainly by the arrival of Dutch whalers, and later by the large number of Danes, who settled and married. Consequently, nowadays most Inuits in West Greenland also have some European ancestors.

Many Inuits moved to the colonial settlements, and became dependant on the trade with the Royal Greenland Trade Department, as did even those who did not move.

With the Europeans also came a lot of diseases to the Arctic; smallpox and putrefactive fever caused many deaths, but due to improved sanitation and hygiene the population in West Greenland rose from 6046 in 1803 to 9914 in 1885. In all of East Greenland there were 243 people in 1894, located in Angmagssalik.

3.4. THE 20th CENTURY

The population was 16,680 people in 1936 and was just over 50,000 in 1977. Fishing industry and sheep-raising began in the beginning of the century. Also at the beginning of the century North Greenland was explored, and a settlement in Thule was established. Later also a settlement in Scoresbysund in East Greenland was established. The First World War was not felt in Greenland, but during World War Two the land was occupied by Americans, however, who recognized Danish sovereignty[17].

In 1953 Greenland moved from colonial status to become an integrated part of Denmark, and during the fifties and sixties Greenland rapidly developed into a modern community.

---

[17] On the establishment of Danish sovereignty, see chapters 4.2.2.1. to 4.2.2.3.

4. WHO DOES THE SOIL OF GREENLAND BELONG TO?

4.1. INTRODUCTION

The answer to the question in the title of this chapter is most important when one attempts to draw up a concession-contract concerning rights governing the exploitation of natural resources. In the short term, it is necessary to know who can legally give exploitation permits, i.e. to determine one of the contract parties. In the long run it is necessary to know if royalty claims can be expected from a third party, or perhaps even possible expropriation or nationalization from a succeeding government or power.

There are two views regarding the issue of ownership:

Firstly, there is the view, which belongs to the sphere of private property and internal laws regulating land claims. This is, in the Greenland case, a rather limited problem, because there is no private or individual ownership of land. The land belongs to the community, society, nobody or the state, which in any case leaves it to be administered by the authorities. The common private utilization of land is through habitual rights or permits of use[1]. This problem will be dealt with in a later chapter[2]. Most of Greenland is uninhabited anyway, so most exploitation of natural resources will not directly come into conflicts with already existing personal rights of use.

Secondly, there is the view, which belongs to the sphere of public law and international law. It is this which is under discussion in this chapter. Is it the authorities of Denmark, or of some other state, that on a colonial or some other basis is or would be legally entitled to sign a contract? Or ought it to be the responsibility of some literally non-existing aborigines, or of perhaps a self-determining Arctic state? Or is the solution more or less of a compromise; and if so, what would be the reason for that?

The answers to these questions fall into two main groups: Denmark's legitimation compared with that of other external powers on the one hand; and on the other, the

---

[1] For example this was more or less explicit stated in the case Hoeegh v. Ministry for Greenland (Oestre Landsret IV nr. 31 and 49/1969), reported in 14 TfGR 93 (1978). See also Oles Varehus A/S v. Ministry for Greenland, reported in 111 UfR 1057 (1977).

[2] See chapter 8.

legitimation of the Danish state towards Greenland's present inhabitants[3]. Besides this, there is a discussion in the theoretical light of self-determination.

4.2. EXTERNAL CLAIMS

4.2.1. Colonialism

As a starting point one might like to ask, why this geographical area Denmark and other geographical areas like Norway are mentioned in a legal context in relation to the geographical area Greenland, despite the fact they are not geographically connected.

One simply has to accept this link as a manifestation of historical facts. All through the sixty centuries of more or less recorded history, imperialism, colonialism or neo-colonialism, the extension of political and economical power by one people or state over another has been taken for granted as part of the established order[4]. It originates in the old law of the jungle, of which the evolutionary struggle for a better life, and the survival of the fittest, are part.

This in some ways justifies the colonizations. It was previously commonly accepted that adventurers should explore the world, claim land, and make possible natives obey their new rulers. The more powerful, and typically more developed, states have always done so. Other states at the same level generally recognized these land claims, and in return their own land claims elsewhere, generally speaking, were recognized. This was a part of public international law.

4.2.2. Norwegian claims on Greenland

4.2.2.1. The original connection with Norway.

It can be argued, that Norway has the right to claim Greenland. In fact Erik the Red

---

[3] The division into internal and external matters was already made by Grotius (1690): "De Imperio Summarum Potestatum Circa Sacra", chapter 3.

[4] The right to colonize was granted as a part of the law of nature, see Grotius, supra. Most other theorists followed this line more or less, see for example the summary in Leger (1962): "The Etiamsi Daremus of Hugo Grotius". Also newer theories recognize the colonialism as granted, see Mommsen (1980): "Theories of Imperialism" and Perham (1961): "The colonial Reckoning".

and many of the other Nordic settlers came from Norway, however, many of them came from the Norwegian province Iceland, but probably only a very few came from continental Denmark.

In 1247 the Norwegian king Hakon sent out bishops to Iceland and Greenland to inform the inhabitants, that they still were his subjects, and to remind them of his supremacy[5]. He presumably did not receive any answer from the Greenlanders, so in 1257 he sent out three trusted Norwegians, who returned from Greenland in 1261, reporting that the inhabitants were willing to pay tribute[6]. Constitutionally this tribute agreement of 1261 forms the basis of the subjection of Greenland to the Norwegian royal power.

4.2.2.2. The administrative transfer to Denmark.

The Danes in 1376 elected Oluf, grandchild of the late king Valdemar, as king of Denmark. Oluf's mother Margrethe, was married to his father, Haakon, who was the king of Norway. When king Haakon died in 1380, his son Oluf, king of Denmark, inherited Norway, and from that time and centuries ahead Denmark and Norway were united under the same king. With Norway, also the supremacy af Greenland, Iceland, Faeroe Islands, Shetland Islands and Orkney Islands was passed on to the king, who resided in Copenhagen[7].

During the centuries following the ties between Denmark and Norway became stronger. From being two kingdoms under the same king, the situation in 1536 was, that Norway was to be regarded as a Danish province, like Sealand and Jutland, according to king Christian the Third's coronation Act[8]. Norwegian laws were now made in Copenhagen, and were

---

[5] According to king Hakon Hakonssons Saga, cf. Gad (1970a): "History of Greenland", vol. I, pg. 120.

[6] No written documents about this were brought back, because the Greenlanders had no knowledge of Latin letters and still used runes. See Gad (1970a) pg. 121.

[7] Olrik (1941): "Rigets genrejsning og Kalmar Unionen 1340 - 1439" 2 Schultz Danmarkshistorie 135 (176ff).

[8] See Ladevig Petersen: "Norgesparagraffen i Christian III's haandfaestning" 12 His.Tid. vol. VI, cf. Bech (1977): "Reformation og Renaessance 1533 - 1596" 6 Politikens Danmarks Historie 11 (134f), cf. Lund (1941): "Under forbundet mellem Konge og Adel 1533 - 1588" 2 Schultz Danmarkshistorie 579 (667ff). The Norwegian jurist Castberg (1947): "Norges Statsforfatning", vol. I, pg. 121ff, only partly agrees.

written in Danish, however, and despite this, they were laws specifically made for the province of Norway. Among the coats of arms in the Danish Great Seal of 1665 were the Norwegian and the Icelandic, as well as the Greenlandic coat of arms[9].

For few years in the 1720's the navigational route to Greenland was from Bergen in Norway, but from 1729 the service was from Copenhagen. The Danish trade monopoly was stated in an Act of 1740[10] and reaffirmed in an Act of 1776[11].

4.2.2.3. The formal transfer to Denmark.

During the Napoleonic wars Denmark took the French side, and therefore, due to an English naval blockade, the Danish Greenland trade was interrupted from 1807 to 1814. Even before Waterloo, Denmark's fate was sealed. After years of war against Sweden, Denmark in 1814 had to sign a peace treaty, according to which a condition for peace was, that the sovereignty of Norway was ceded to the Swedish king. The originally Norwegian dependencies Iceland, Faeroe Islands and Greenland however were expressly excepted, and they remained part of the Kingdom of Denmark[12]. In a convention of 1819 Norway finally gave up any claim regarding Greenland[13].

4.2.2.4. Re-negotiations.

In Denmark there had been a little doubt about the American point of view concerning

---

[9] The Great Seal in the Danish constitution of 1665.

[10] Plakat of April 9th 1740.

[11] Kongelig Anordning of March 18th 1776. From this year the Royal Greenland Trade Department had its monopoly.

[12] According to the Kiel Peace-treaty of January 14th, ratified January 19th 1814, Article 4. It was probably due to the Swedish negotiator's lack of historical knowledge, that the Danish negotiator, Count Edmund Bourke, could get this through, cf. Viback (1978): "Reform og Fallit 1784 - 1830" 10 Politikens Danmarks Historie 11 (363).

[13] In the convention between Norway-Sweden and Denmark of September 1st 1819 the two kingdoms both gave up any claims based on the Kiel Treaty or the previous connection between Denmark and Norway. The Swedish king expressly gave up the claim regarding Greenland in a note of May 28th 1819, cf. Castberg (1947) op.cit. pg. 136. This was later, in 1821, accepted by the Norwegian parliament.

Greenland, particularly with regard to the northwestern area around Thule. In connection with the sale of the Virgin Islands to the United States, Denmark in 1916 took the opportunity to secure American recognition of Danish sovereignty over the whole of Greenland.

Later other powers also recognized the Danish sovereignty, and in July 1919 the Norwegian foreign minister insured, that the Norwegian government would "not make any difficulties in the arrangement of this matter".[14] Two years later the succeeding Norwegian Foreign Minister nonetheless refused to put this in writing, because the Norwegians in the meantime had realized, that the Danish sovereignty might mean the exclusion of Norwegian fishermen from East Greenland. For this reason they wanted the Greenland question re-negotiated[15]. This resulted in a treaty of 1924, which made hunting and fishing along the entire East Coast equally available to citizens of Denmark and Norway[16].

4.2.2.5. The Hague case.

From northern Norway there was some sealing and whaling near the coasts of East Greenland, and a small number of hunters even stayed in Greenland during the winters. The Norwegian fishermen were also interested in the waters of East Greenland, and they were particularly interested in establishing ports on the coast. It was not all of Greenland, but only the East Coast, the Norwegians were interested in. Overall from a Norwegian point of view, the Greenland matters were not of any great economic importance; but even so, the Greenland question did become a national question of sovereignty, and in 1926 a Norwegian Greenland-movement was founded. Greenland to some extent was used for an internal Norwegian nationalist resurgence. The wrongs of East Greenland figured in the

---

[14] See Derry (1973): "A History of Modern Norway 1814-1972", pg. 353. Believing in this assurance, Denmark recognized the Norwegian sovereignty over Spitzbergen (Svalbard), cf. Jensen (1943): "Den politiske udvikling mellem Verdenskrigene 1920 - 1939" 6 Schultz Danmarkshistorie 157 (245f).

[15] An Act from the Danish Minister of the Interior of May 10th 1921 stating that the Danish sovereignty included East Greenland, caused so much dissatisfaction among Norwegian fishermen and hunters, that on 7 July 1923 the Norwegian government asked for a re-negotiation, cf. Sveistrup (1953): "Rigsdagen og Groenland" in "Den Danske Rigsdag 1849-1949", vol. VI, pg. 268.

[16] Sveistrup (1953) op.cit. pg. 269ff.

official programme of the Agrarian party, which came to power in June 1931[17].

Already in 1930 the Norwegian government authorized some hunters with police-jurisdiction in East Greenland. But on 28th June 1931 a group of hunters raised the Norwegian flag and declared the lands between the parallels 71 and 75 occupied in the name of the Norwegian king, which the Norwegian government approved 10th July 1931.

The very next day the Danish government referred the question of sovereignty to the Permanent Court of International Justice in the Hague. Despite this, and before the Hague pleadings had ended, the Norwegian government 12th July 1932 also declared the lands between the 60th and the 63.rd. latitude occupied[18].

The judgement of the Hague Tribunal, announced 5th April 1933, was a complete rejection of the Norwegian claims by eleven votes to one (the Norwegian judge). Danish sovereignty over all of Greenland was considered to have been established since 1814, and been acknowledged in the convention of 1819[19].

By an Act of 7th April 1933 Norway repealed her occupation of East Greenland[20].

4.2.3. Claims from states other than Norway

No other external powers apart from Norway have tried to claim sovereignty over Greenland. Other states have however shown some interest in Greenland, which is summarized below.

Iceland, which is the European country geographically closest to Greenland, could base a claim on the fact, that the Vikings, who settled in Greenland, mainly came from or at

---

[17] See Derry (1973) op.cit. pg. 354f, and Bull (1979): "Klassekamp og Faellesskab 1920 - 1945" in Mykland (1979): "Norges Historie", vol. 13, pg. 260ff.

[18] See Jensen (1943) op.cit. pg. 246. Extensive discussions of rights and circumstances may be found in Knud Berlin (1932): "Danmarks ret til Grønland" (Denmarks right to Greenland) with numerous references to Norwegian articles with opposite points of view.

[19] Cour Permanente de Justice Internationale, Serie A-B-No. 53. Statut juridique du Groenland oriental, Arret du 5.4.1933, cf. Castberg (1947) op.cit. pg. 136. Among the premises also were mentioned the Danish Act of 1776, the acknowledgment of the Norwegian Foreign Minister in 1919, and the factual way Denmark had exercised her authority in the decades prior to 1931.

[20] Kongelig Resolusjon of April 7th 1933, cf. Castberg (1947) op.cit. pg. 218.

least through Iceland. But at that time Iceland was only a province under the Norwegian king, and like the Greenlanders, the Icelanders paid tax to the Norwegian king. Iceland also left the Norwegian crown in 1814, and was under the Danish king until 1944. Iceland has never made any claims concerning the Greenland land–masses.

1576–1578 the Englishman Martin Frobisher was in Greenland, and on his way to Greenland, Frobisher claimed English sovereignty over some island he called Friesland[21]. In the following century this matter however was settled in a treaty between the Danish and the English king, in which the Englishmen acknowledged Danish sovereignty. During this and the following centuries British whalers were operating in Greenland waters, but there has never been any subsequent British claims regarding Greenland.

Whalers of other nationalities were also hunting in that area at this time: the Dutch even made land–bases, from which they conducted a considerable amount of trade with the natives, as described in chapter 3. In the 1730's Danish battleships forced the Dutchmen to leave Greenland, but later, however, they were given certain whaling rights.

As earlier mentioned the United States have also been involved with Greenland. It was the American explorer Robert Peary who in 1892 was the first to establish contact with the isolated Thule Inuits. On his way to the North Pole, Peary explored parts of North Greenland. Notwithstanding the United States recognized the Danish sovereignty in 1916. During World War II the protection and navigational service of Greenland were taken over by the United States, who still recognized Danish sovereignty. Several military airbases were established, the most important ones were Narsarssuaq, Sondre Stroemfjord and Thule Airbase, of which the latter two still function as such[22].

The Canadians have never advanced any claims. In contrast, the Canadians by 1922 had established ship patrols for their eastern Arctic territory on an annual basis. This activity was a result of the denial of Canadian sovereignty over Ellesmere Island by the Danish explorer Knud Rasmussen, and the endorsement of this denial by the Danish

---

[21] Not the Friesland that is today a part of Germany and the Netherlands. On maps from that time Friesland is located between Scotland and Greenland, and south of Iceland. Whether the island disappeared or was a part of one of the three land–masses just mentioned is not known. Perhaps the uninhabited island Rockall, which recently caused diplomatic disputes between Great Britain and on the other side Denmark and the Faeroe Islands, might have something to do with it.

[22] Under the guidelines of a treaty of April 27th 1953.

government. However, Denmark later allowed the issue of Ellesmere Island to fade away[23].

Finally it has to be mentioned, that there are several agreements concerning limited fishing rights in Greenland waters. For instance the EEC countries[24], the Faeroe Islands and Norway have such rights.

4.2.4. Conclusion regarding external links

Now that the legal relations between Greenland and other countries have been described, it should be clear that states external to the Danish–Greenlandic relationship have no claims on Greenland, other than limited rights which derive from treaties with the Kingdom of Denmark, as briefly described.

Besides a theoretical discussion of the possibility of a fully independent Inuit–state in Greenland, there remains only the discussion of the internal division of powers and rights among the government of the Kingdom of Denmark and her citizens in Greenland.

4.3. INTERNAL RIGHTS AND OBLIGATIONS

By the word internal is meant that the issues discussed come under Danish sovereignty over Greenland. This discussion is an attempt to analyse the legal relationship of Denmark with Greenland, as well as the rights of the Greenlandic inhabitants in the context of the natural resources.

4.3.1. Rights on a historical basis

Before going into a discussion of legal theories and systems, it would be interesting to ascertain whether using a more philosophical approach to the history of the people of Greenland could almost prejudicially suggest a solution to the allocation of rights. This is what the following passage is aimed at.

---

[23] According to Reid (1974): "The Canadian claim to sovereignty over the waters of the Arctic" 12 CYIL 114 (1974) and Pharand (1988): "Canada's Arctic Waters in international law", Cambridge (1988).

[24] Based on Regulation 2141/70 of October 20th 1970. See chapter 6.

4.3.1.1. Inuits or Nordic Greenlanders.

The Nordic Greenlanders and the Inuits came to Greenland about the same time, around one thousand years ago. The Inuits, who settled in North Greenland, met some Palaeoeskimos, who had been there for some centuries, and with whom they presumably did not interfere[25]. Because they did not interfere peacefully with each other, and perhaps did even fight each other, one could say that no basic or fundamental rights were transferred from the Dorset Eskimos to the Inuits. In other words, the Inuits cannot base any claim on events, which took place prior to their own immigration, which was at most a millenium ago.

The West Greenland Vikings found deserted land alone[26]. They came there primarily because all attractive land on Iceland had been claimed and distributed[27]. Better land could be obtained in Greenland. There the lands were claimed and distributed as on Iceland, and private property, individual title, was established[28].

Five hundred years later the Greenlanders were extirpated, and the Inuits were living there. With help of climatic and other changes one race superseded the other. Possibly, the Greenlanders simply died out themselves. But individual and personal land title had been established by the Nordic Greenlanders, whereas the Inuits did not subsequently claim or distribute the land; they merely exercised a collective use[29].

Now it could be an interesting, but nevertheless purely academic question, to ask whether the Nordic land titles outlived the Inuit use, or became extinct over the following centuries of undisturbed use. And at a higher level; was the sovereignty claimed by the Norwegian king brought to an end by the extirpation of his true subjects, despite the

---

[25] See chapter 3.2.3. with footnote 6.

[26] See chapter 3.2.2.

[27] The so-called landnam had taken place on Iceland a century prior to the discovery of Greenland

[28] See for example Gunnarson (1978): "De islandske Sagaer", vol. III, pg. 352ff.

[29] It is uncertain whether the use can be characterized as a right of use, if the sucession took place by violent extirpation of the Greenlanders.

absence of claims in the intervening time until the claims of his own successors? Or did the Inuits after the extirpation of the Greenlanders obtain a simple right to the lands, according to the old law of the jungle[30]. Fortunately, this long and diffuse discussion seems unnecessary when we look at what happened during the colonization.

4.3.1.2. Mutual acceptance.

The re-colonization after 1721 can be seen as a mutual acceptance by the Inuits and the Danes of each other's presence.

Danish sovereignty was still claimed or at least re- claimed after 1721. But the Danish colonizers did not by reference to previous rights extirpate or expel the Inuits, even though the Inuits for their part expected such a vendetta according to their own legends[31].

If the Inuits had wished to assert sovereignty over the land, they would have tried to prevent settlement of the colonists and colonizers, which they did not.

Instead the mutual acceptance developed into mutual partial dependence. Large scale trade is evidence of this[32], as well as the establishment of social aid. The two races intermarried and one could perhaps say that a new people with a new western culture superseded the old one.

One can conclude that this philosophical approach suggests that the mutual acceptance after the re-colonization precludes all possible previous rights. Rights would then be those established after the re-colonization.

4.3.2. Aboriginal rights

---

[30] About this, confer with chapter 4.2.1.

[31] See for example legends in Rasmussen (1981): "Inuit Fortaeller". They were aware that their ancestors had committed something wrong, and they were thus very grateful when they learned, that they ought not expect a blood revenge. Other examples can be found in Fisker (1980): "Pamiut Frederikshaab" and Bak (1981): "Nanortalik".

[32] Some would claim, that the Danes exploited the Inuits, cf. Viemose (1977): "Dansk Kolonipolitik i Groenland". However, all trade basically depends on demand and supply; and there are different norms of values in different societies in different times.

4.3.2.1. Introduction.

It has been claimed, that the inhabitants of Greenland have aboriginal rights to the land. It is difficult to decide what aboriginal rights are[33]. They probably have something to do with native people who live in an area which constitutes the basis for their existence; have a fundamental right to claim the land, because they are human beings[34]. Such a theory might seem reasonable to the modern moral sense of human rights. A discussion on the acceptance and the content of a theory of real aboriginal rights follows below.

But firstly it has to be mentioned, that in the Greenland case the discussion is very complicated and perhaps even hypothetical, because there are not many bone-and--stone-age Inuits left, and because it is debatable, whether the Inuits and not the Nordic Greenlanders are to be regarded as the real aborigines.

4.3.2.2. The United States.

It also has to be mentioned that the Greenland case is not comparable with the numerous Indian title cases in the United States. Those also concern rights of the natives, but the difference is that in the United States most cases are concerned with some native rights provided for in land purchase contracts and old treaties establishing Indian territories[35]. In other words, these cases are contractual disputes, and therefore they can be settled under the laws of the United States, which from a legal point of view is easier than having to go a step further and adapt a diffuse theory on native rights. In Greenland it has never been necessary to make territorial or reservation contracts. For this reason we

---

[33] See for example the introduction to Broested (1980): "Oprindelige folks Ejendomsret".

[34] This is an extension of the definition of Francisco de Vitoria from the 16th century. His definition is a traditional concept of Ius-Naturale, that asserts the natural rights of the natives. However the right to colonize is not questioned by de Vitoria, but taken almost for granted as Grotius later did, see footnote 4 above.

[35] Cf. Cohen (1947): "Original Indian Title", 32 Min.LR 28 (1947) and Germer (1978): "Responsum" Bet. 837, vol. 2, pg. 26, section e. See also P.C. Maxfield (1983): "Tribal control of indian mineral development" 62 Or.L.R. 49 (1983) and Stuart Day (1983): "Indian Law - tribal authority to levy a mineral severance Tax on non-Indian lessees" 18 L.W.L.R. 539 (1983).

are faced with this potentially hypothetical discussion on real aboriginal rights.

4.3.2.3. A theory on aboriginal rights.

One may suggest that the aboriginal right can be characterized as essentially the right of a native people to continue to live in the same place in the same way, as they have done since time immemorial. Theoretically, it is the right of a native people to choose to remain a native people. To be able to do this, they must have the right to use the lands which they previously have used; a so-called usus-fructus[36]. It is a sort of prescriptive limited occupancy for the tribe concerned, a customary right of collective land use. But because it is according to custom, the right cannot be widened to cover anything more than customary use. And because it is a collective right, none of the native users can use the lands in an individual way that interferes or disturbs the collective use. But the individual native can use the land in a different way, as long as it does not interfere with the collective use. Neither the tribe nor any of the other natives can have any reasonable objections to such utilization. And if the native individual has such rights parallel to the collective rights, why should non-native individuals not have equal rights?

So the aboriginal right is a somewhat limited right. It is limited to those specific lands used previously and still in use. And in these lands other rights can exist at the same time.

Here it should be added that other Scandinavian scientists have tried to connote sovereignty rights to aboriginal rights, however, to a higher degree on the basis of political arguments than on the basis of jurisprudential thinking.

4.3.2.4. Aboriginal rights in Greenland.

To recapitulate the aboriginal rights theory applied to the Greenland case: one has to remember that it is a condition that it is the Inuits, not the Nordic Greenlanders, who are considered the real aborigines[37]. It is also a condition that the culture is still identical to

---

[36] Cf. Cumming (1972): "Native Rights in Canada", pg. 39, and Espersen (1978): "Responsum" Bet. 837, pg. 40, section 21.

[37] With hesitation one might be able to state this.

the one on which the claim is based. If the culture has changed or developed so much that the people can no longer identify with their ancestors, it would not then be reasonable to use this sort of prescriptive rights[38].

The result of the acknowledgment of aboriginal rights in this strict sense in Greenland would be limited to recognition of the rights to settle and to hunt on land, and to pursue the activities of whaling, sealing and fishing in coastal waters[39]. This was one side of the problem, the content of aboriginal rights. The other side of the problem would be the extent of the right in terms of pure dimensions. Aboriginal rights could never be stretched out to cover all of Greenland, because the rights are limited to areas, where natives habitually exercise their activities. For instance, the whole inland icecap, the far offshore areas, and East and North Greenland, except for areas around Angmagssalik, Scoresbysund and Thule, could not possibly be affected by aboriginal rights.

4.3.2.5. Aboriginal rights and the present law.

In Canada and the United States Inuits and Indians have tried to claim aboriginal rights, without these been provided for in a treaty or other such official act. So far they have not succeeded[40]. So a real theory about aboriginal rights has not yet been accepted. Or at least

---

[38] Or for example if one from an objective point of view says that the Inuits in Greenland still have their own unique culture, but it is considered to be more like the western culture than like a stone–and–bone–age culture; then it would not either be reasonable to apply this sort of prescriptive rights. This result can be based on a sort of inheritance theory; because it is not personal rights, but collective rights, the intestates and the heirs do not have to be personally related, but instead the communities or cultures have to be related to each other to form a line of succession. A prescriptive theory would also require a sort of transfer of rights to accept a succession.

[39] The aboriginal right could perhaps, by reference to how the culture would have developed "naturally" without interference from outsiders, be stretched out to include the right to some agriculture and reindeer–raising. But leaving aside moral and practical issues, legally it would probably be possible to give mining permits, despite aboriginal rights in the same area.

[40] See Cumming (1972) op.cit., Espersen (1978) op.cit., and Kelly (1975): "Indian title – The rights of American natives in lands they have occupied since time immemorial", 75 Col.LR 655, where he mentions one unique, but somewhat special case, Edvardsen v. Morton, that to some extent recognizes real aboriginal rights.

it has not been accepted under this label[41].

However one could say that aboriginal rights work in practice in Greenland today. There are no regulations that prevent people from migrating to a distant place to live as in a stone-age culture. And the inhabitants of Greenland have full and free rights to exercise hunting, whaling, sealing and fishing[42] and even to start up agricultural land utilization[43].

The International Labour Conference has at its 76th session adopted the Convention Concerning Indigenous and Tribal Peoples in Independent Countries[44]. Part II of this convention is concerned with the relationship of these peoples with the lands which they occupy. The relocation of such peoples is foreseen as an exceptional measure, which may take place against compensation only. The convention does not use the term "aboriginal", but it must be seen as a political recognition of aboriginal rights.

As it is today, aboriginal rights have not been legally pleaded concerning any specific area of Greenland. Nonetheless the theory described could easily be adapted within the Danish legal system as a sort of prescriptive right of use. But it does not seem necessary in this wide sense at the present stage[45].

A far more extensive sort of aboriginal right, not consistent with the present constitutional relationship between Denmark and Greenland, would be to exercise full self-determination, e.g. independence, according to the charter of the United Nations, which is discussed below in chapter 4.4.

4.3.3. The 1953 revision of the Danish constitution

The first article of the revised Danish constitution of June 5th 1953 states that "This

---

[41] In Norway, Sweden and Finland some habitual rights concerning reindeer-raising of the Sami-people have been recognized, cf. Cramer (1982): "The Sami-people in (the sight of) Swedish law" 51 NTfIR 44 (1982) and Broested (1983): "Urfolksret i Norden".

[42] There are a few limitations in the Wild Life Protection Act.

[43] See chapter 8.3.5.

[44] Reprinted in 28 ILM 1382 (1989).

[45] However, see chapter 8.3.5.4. concerning compensation for hunting rights.

constitution applies for all parts of the Kingdom of Denmark"[46]. This means that this constitution explicitly also applies to Greenland; it also implies that the Kingdom of Denmark is one unity.

Before 1953, Greenland's constitutional status was colonial[47]. This implied that the constitution only applied indirectly and only in a limited number of fields. Montesqieux's three– division of powers did not apply. Human rights in the constitution did not apply, and the Greenlandic subjects were not represented in parliament[48]. And parliament was probably entitled to sell the colony without any referendum as happened in the case of the Danish Virgin Islands.

As early as 1945 leading Greenlandic politicians were working for better conditions for the Greenlandic citizens through integration into Denmark[49]. This opinion became more and more explicit in the years following, and the demand was advanced by Greenland politicians[50]. At the Greenland Provincial Council's session in 1951 the demand was reiterated. In 1952 the Greenland Provincial Council asked the constitutional commission in session to make a draft for an integration, which could possibly become included in the revised Danish constitution. At the Autumn session in 1952 the Greenland Provincial Council unanimously adopted the draft made by the commission. The idea of holding a referendum in Greenland was not at all considered, because of the unanimous demand for integration, and approval of the draft by the 16 elected Greenlandic representatives in the Greenland Provincial Council[51],[52].

---

[46] Author's translation, cf. Danmarks Riges Grundlov, Act no. 169 of June 5th 1953.

[47] See Soerensen (1973): "Statsforfatningsret", pg. 44.

[48] Soerensen (1973) Ibid.

[49] See for instance the article of Lynge (1945) in Groenlandsposten 1945, pg. 223.

[50] Very explicitly during the visit of the Danish Prime Minister and a parliament delegation in 1948.

[51] Cf. Petersen (1975): "Groenlandssagens behandling i FN 1946– 54", pg. 21f and 126f.

[52] See a different view, Alfredsson (1982): "Greenland and the right to Self–Determination" 51 NTfIR

For several years prior to 1953, as the development of Greenland proceeded, the Danish population had not really regarded Greenland as a colony, but more like an equal province within the kingdom. Therefore it was very natural to the Danes, that the Greenlandic subjects obtained the same rights and obligations as other Danish subjects. Recognizing the wishes of the inhabitants of Greenland, the constitution of June 5th 1953 gave them the same rights and duties as the rest of the Danish people. And, incidentally, this did not imply any special rights to individuals regarding local rights to natural resources.

4.3.4. The United Nation's recognition of integration

The Charter of the United Nations contains three chapters on colonial matters[53]. According to the wording of the charter, all countries controlling so-called non-self--governing territories have committed themselves to guaranteeing the development of such territories. To ensure this development, the colonial powers are obliged to submit to the United Nations annual reports concerning the political, economic and social progress of such a territory[54].

To show its readiness to fulfil its obligations to the United Nations Charter, the Danish government in 1946 declared Greenland a colony, and subsequently submitted the annual reports. However, Danish colonial policy had been rather exceptional. Exploitation of Greenland had never taken place, and the Greenland population was far more developed than most other colonial people, in fact to the same level as the populations of many of the United Nations member countries. Moreover Danish colonial policy was continuously praised by other United Nations member states.

After the revised Danish constitution was carried in 1953, from which moment Greenland was a part of the realm on an equal footing with the rest of the country, the Danish government informed the United Nations, that it regarded its responsibilities

---

39 (pg. 40). This article however seems partly to be based on a misinterpretation of Petersen (1975) op.cit.

53 Chapters 11, 12 and 13.

54 Article 73.

according to chapter 11 of the Charter as terminated[55].

In the Fourth Committee of the United Nations there was some criticism concerning the procedure of the integration, but none of this criticism gave rise to any doubt about the legitimacy of the change of status. Subsequently it was approved almost unanimously at the General Assembly[56].

Legally,[57] this approval was based on an interpretation of Article 1, paragraph 2, and Article 55 in the Charter[58]. According to these articles a people has the right to self-determination, which is a fundamental human right[59]. In the resolution approving the integration of Greenland[60] the General Assembly expressed that "when deciding on their new constitutional status through their duly elected representatives the people of Greenland have freely exercised their right to self-determination"[61],[62].

---

[55] Letter of September 3rd 1953 to the United Nations Secretary- General Dag Hammarskjoeld, cf. Petersen (1975) op.cit., pg. 126f.

[56] However, it must here be noted that the standards for granting or withholding the right to self-determination is incoherent and seen to lack connection to any underlying rational general principles, according to Thomas M. Franck (1988): "Legitimacy in the international system" 83 Am.J.Int.L. 705 (746)(1988).

[57] Politically, it might have been because of the exceptional development of Greenland, and Denmark's goodwill in the United Nations, as well as the effective efforts of the Danish diplomat in the United Nations, according to Petersen (1975) op.cit. pg. 127f.

[58] One has to remember, that the Human Rights Conventions of December 16th 1966 were not in force at that point of time, whereas the Charter of the United Nations entered into force on October 24th 1945.

[59] See General Assembly Resolution 421 (V), December 4th 1950. Subsequently the General Assembly in Resolution 545 (VI), February 5th 1952, decided to include an article on the right to self-determination in the covenants on human rights.

[60] See General Assembly Resolution 849 (IX), November 22nd 1954.

[61] Besides Greenland, complete integrations have only been accepted in the cases of Alaska and Hawaii, General Assembly Resolution 1469 (XIV), December 12th 1959, cf. Goodrich, Hambro and Simons (1969): "Charter of the United Nations".

[62] Other legal scholars, with those Alfredsson (1982) op.cit. and Harhoff (1982): "Det groenlandske Hjemmestyres grund og graenser" 116 UfR 101B (106ff)(1982), have claimed, that it was not a qualified exercise of the right to self- determination. See chapter 4.4.2. below.

4.3.5. The Home Rule Act

The Danish constitution is at a higher legal level than any other Danish law. All other Danish laws have to be consistent with it. The constitution is so to speak the frame given by the people, within which the parliament and the government have to work.

In 1978 the Danish parliament passed an Act concerning local autonomy in Greenland, the so-called Home Rule Act[63]. This Act established local autonomy to a high degree; but it must be recalled in this connection, that it is still within the constitutional frames, as described in chapter 4.3.3., and that the law like any other law can be changed by the Danish parliament according to constitutional jurisprudence[64].

The Act underlines the unity of the Danish realm, the Kingdom of Denmark, and contains a number of articles regulating the division of powers between local authorities and state authorities. The administrative matters are described in chapter 5, but in short it can be said that the local authorities only deal with internal matters, and only these fields where they have got specific authority from the state. The number of areas, where the local authorities are competent, are to be increased as the system develops.

But of importance is the statement of principle in Article 8 of the Home Rule Act concerning the soil. It reads as follows[65]: "The resident population of Greenland has fundamental rights[66] in respect of Greenland's natural resources. To safeguard the rights of the resident population in respect of non-living resources and to protect the interests of

---

[63] Act no. 577 of November 29th 1978.

[64] Politically, however, the Act has been seen as a treaty which cannot be altered without accept from the Home Rule authorities, cf. Germer, Peter (1988): "Statsforfatningsret I" Juristforbundets Forlag, Copenhagen (1988), pp. 19-20 and pp 92-93.

[65] The formulation is by Isi Foighel, chairman of the commission on Home Rule in Greenland, see Foighel (1979a): "Home Rule in Greenland" 48 NTfIR 4 (1979). He has described the new Home Rule Act in a number of articles, see for instance Foighel (1979b): "Groenlands Selbstverwaltung" 22 GYIL 274 and Foighel (1980): "Home Rule in Greenland. A framework for local autonomy" 17 CMLR 91 (1980).

[66] The Act does not use the expressions "the" or "their" in relation to the fundamental rights. This omission was part of a political compromise, according to Foighel. Compare the wording of art. 1. in UN General Asembly Resolution 1803 (XVII), 2 ILM 223 (1963).

the unity of the Realm, it shall be enacted by statute that preliminary study, prospecting and exploitation of these resources are to be regulated by agreement between the government and the Landsstyre"[67].

The statement of the fundamental rights is merely a political and moral statement, and according to the chairman of the Home Rule Commission, it cannot be subject to legal interpretation[68]. Although it may seem strange that an article in a law can not be subject to legal interpretation, it nonetheless hopefully is the case; because if this statement is more than a political recognition of the existence of some rights of the inhabitants, the Danish parliament might have gone beyond its competences according to the Danish constitution. In any case, the article has to be interpreted in a way that is consistent with the constitution and with common rights at a constitutional level[69]. Such means of interpretation is the most appropriate according to Danish legal practice.

Besides the political statements in the Home Rule Act there are more definite provisions concerning the soil in the Act on Mineral Resources in Greenland[70]. According to this Act, Denmark and Greenland shall have equal rights, and the public revenue deriving from exploitation shall be shared between Denmark and Greenland. In accordance with the Act a joint decision-making power is established; this could be described as a reciprocal right of veto for the state authorities and the Home Rule authorities concerning the major arrangements with regard to non- living natural resources. This works through a joint Danish- Greenlandic committee on mineral resources, and the major administrative tasks are carried out by the Mineral Resources Administration for Greenland under the Danish Minister of Energy. It is the Mineral Resources Administration that deal with all relations with the concessionaires.

---

[67] The Landsstyre is the Greenland executive authority.

[68] Foighel (1979c): "Groenlands Hjemmestyre" 113 UfR B 89 (1979), at pg. 96.

[69] Cf. Harhoff (1988): "Constitutional and International Legal Aspects of Aboriginal Rights" 57 NTfIR 293 (1988). Harhoff suggests that the Home Rule materializes the right to self-determination and that this is a costumary change in the Constitution.

[70] Act no. 585 of November 29th 1978, which was replaced by Act no. 335 of June 6th 1991.

4.4. GREENLAND INDEPENDENT

This section is included to anticipate the theoretical possibility of a wish to become self-determining, e.g. through some form of independence. What can such a claim be legally founded on, and what are the consequences of the claim and its legal basis?

4.4.1. Regulations of the United Nations

Self-determination for indigenous people has become a recognized right in this century. Earlier it was only philosophers who were concerned; but some seventy years ago the idea was taken up by the leading politicians of the world[71].

In 1945 the principle of the right to self-determination was stated in the Charter of the United Nations, as a way to develop friendly relations among nations[72]. After the principle had been stated in the Charter, the legal content of the right was written down in the following decades.

Several resolutions concerning colonies and self- determination have been adopted in the General Assembly. Most important, however, are the conventions on human rights of December 16th 1966[73]. In Article 1, paragraph 2 it is stated, that a people has the right to self-determination; and that with the right to self-determination follows the right to natural resources[74]; and that generally a people can never be deprived of its possibilities of making a living.

---

[71] Woodrow Wilson in his Fourteen Points of January 8th 1918 and Stalin (1913): "Marxism and the national-colonial question".

[72] Article 1, paragraph 2 in the Charter. Here it has to be recalled that basically the Charter only provides so-called negative rights in order to prevent war in the world.

[73] The covenant on Civil and Political Rights entered into force on March 23rd 1976, and the covenant on Economic, Social and Cultural Rights on January 3rd 1976.

[74] It has to be noticed that the right to natural resources is a consequence of exercising the right to self-determination. If the people do not exercise their right to become independent, they do not have an independent right to the natural resources.

In a delaration of 1970[75] the General Assembly stated, that a people can exercise its rights to self- determination by deciding to associate or integrate with an independent state.

4.4.2. The Greenlandic exercise of the right to self-determination

It has been debated, whether the inhabitants of Greenland[76] have exercised their right to self-determination. Some legal scholars have stated that the 1952 decision of the Greenland Provincial Council was not a qualified exercise of the right to self-determination, mainly because no referendum was held, and because no options were offered[77].

The right to self-determination was exercised by the adoption of the Danish constitution in 1952. So one of the highest authorities to judge the fulfilments of the Charter of the United Nations very clearly expressed it in 1954[78]. It has later been expressed clearly that the right to self-determination is exercised by the decision to integrate[79]. According to an interpretation of the decisions of the United Nations, Greenland has exercised the right to self-determination[80].

After the adoption of the Danish constitution of 1953 the inhabitants of Greenland on numerous occasions accepted and used their integrated status, for instance by electing

---

[75] Resolution 2625 (XXV) of October 24th 1970.

[76] It has been questioned, for instance by the Home Rule Commission, whether the inhabitants of Greenland are a people at all. They are not as distinct a people as the stone-age Inuits or the Alaskan Inuits, and they live in a western culture. Despite this, the inhabitants of Greenland probably are a people. For instance Kaladharan Nayar (1974): "Self- Determination: The Bangladesh Experience", Revue des Droit de l'homme, 7 HRJ 231 (257)(1974) states that a nation is when "a body of people.....feel that they are a nation". See Espersen (1978) op.cit. and also Harhoff (1988) supra, at pg. 292.

[77] Harhoff (1982) op.cit. pg. 107 and Alfredsson (1982) op.cit. pg. 40ff.

[78] General Assembly Resolution 849 (IX) 1954: ".....the people of Greenland have freely exercised their right to self- determination".

[79] Resolution 2625 (XXV) 1970.

[80] The view that the right to self-determination is exercised, because the United Nations have stated that it is, is also implicitly supported by Espersen (1978) op.cit. pg. 45f.

members of the Danish parliament[81] and by adopting the Home Rule Act.

On the basis of the above mentioned Acts of the United Nations it can be concluded that because the right to self-determination has been exercised, the Danish government is no longer bound to promote the independence of Greenland[82]. And the inhabitants cannot on the basis of the resolutions of the United Nations claim independent rights to the natural resources below the earth-surface, because these rights follow from the exercise of independence[83] This has also been expressed quite clearly by the Danish Prime Minister, who in 1976 said that if the inhabitants of Greenland wanted the rights to the subsoil, they would have to leave the Kingdom of Denmark[84].

4.4.3. A right to re-exercise, and its consequences

A crucial question is whether the right to self-determination can be exercised only once. At least when the rights have once been exercised to decide not to remain a non-self-governing territory, then the obligations of the metropole state according to the Charter of the United Nations, chapters 11, 12 and 13 are terminated.

But it would be a denial of historical experience to believe that a decision of any kind would be indefinitely binding for future generations. Greenland's inhabitants probably still have a right to claim independence[85]. But the independence can only be claimed for the lands they occupy: in this case West Greenland, and the areas around Angmagssalik, Scoresbysund and Thule. Any further claims would be made on an imperialist basis, which

---

[81] There have been two members directly elected in Greenland.

[82] Which is an obligation according to Article 73 of the Charter.

[83] Human Rights Conventions, Article 1, paragraph 2.

[84] The Socialdemocratic Prime Minister Anker Joergensen in a speech in October 1976. The opinion is repeated in 13 Nord. Kon. 956 (1984).

[85] This right is the same as for any other people living in a part of any other state, like Croatia, Kurdistan or Quebec. But as in this case being a population of only 50,000 people, of which 20% are Danes, it is very unlikely, that they can function as a state, the remote geographical situation taken into account. This is also the conclusion of Gunnar Martens (1988): "Administration in Greenland - A limitation to Autonomy" 57 NTfIR 1988.

would be no better than the Danish claim, and actually less legitimate[86],[87]. From a legal point of view an independent Greenland presumably could only consist of West Greenland. The rest would still be under Danish sovereignty[88].

In the event that Greenland becomes independent, and if the arrangement of the mineral resources exploitation is to be changed, the provisions of the General Assembly's Resolution on Permanent sovereignty over natural Resources[89] have to be recalled. Article 4 lays down that "Nationalization, expropriation or requisiting shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law."

4.5. CONCLUSION

The crucial question in the title of this chapter can now be answered quite clearly. It is the Danish state that has the right to the soil of Greenland, and there are no legal grounds for royalty claims from a third parties. It is the Danish and Greenlandic authorities that have the exclusive right to give or to enter into concession arrangements.

It is tempting to suggest that in the unlikely event of an independent West Greenland, the concessions previously established are not invalid, i.e. they cannot become nationalized without compensation, because the concessions are provided with the approval of the

---

[86] Theoretically, a claim for independence would be to assert that the Danish constitution does not apply in Greenland.

[87] The legitimation of the Danes would firstly be to recover the expenditures that have been made in connection with Greenland. The Danes also have an interest in keeping these areas as reserve lands for utilization of non-living, as well as living natural resources.

[88] The Danish state has on earlier occasions shown its readiness to assert its supremacy by force, for instance in 1956 in the "Klaksvik-affair", where police forces and a battleship was sent to the Faeroe Islands.

[89] The General Assembly's Resolution 1803 (XVII) 1962, see 2 ILM 223 (1963).

inhabitants, due to the veto right rules in the Home Rule Act[90]. The reason to this suggestion is the fact that a possible claim of a right to exercise nationalization without compensation should be based on points of view relating to ordre public to achieve recognition in international law; When the majority of the inhabitants have had the possibility to put forward a veto against a concession and its development within the existing system, it would be hard subsequently to accept an argument based on ordre public. However, this does not exclude the possibility of lawfull expropriations against full compensation.

This is also consistent with the traditional legal view of concessions in areas where sovereignty is transferred from one State to another. The rights under the concessions are protected as acquired rights[91]. The mining companies should therefore have confidence in the concessions, and should rely in the legal situation, whereby expropriation of the concessions may only take place against full economic compensation of losses of investments and expected income[92].

---

[90] Cf. sections 4.4.1. and 4.3.5. above.

[91] See Moeller (1925): "Folkeretten" Vol. I, Gad, Copenhagen (1925) pg. 115, and Fauchille (1922): "Droit International Public" Vol. I,1. pg. 361: "concessions de mines ..... constituent des droit acquis". See also Mosler, Hermann (1948): "Wirtschaftskonzessionen bei Aenderungen der Statshoheit".

[92] Cf. chapters 8, 11 and 13 below, and Foighel, Isi (1963): "Nationalization and Compensation" Stevens & Sons, London (1963), chapter 12. See in particular part VII of the Liamco vs. Libya Award, 20 ILM 1 (1981), and the Aminoil Award, 21 ILM 976 1982), part 8.

5. THE GREENLANDIC OFFSHORE AREA

Although the Greenlandic sea waters seem vast and extensive, there are limitations to the physical extent of Danish supremacy. Furthermore, inside the Danish area there are, as in other seas, zones with different legal consequences of Danish supremacy.

5.1. The legal zones

Supremacy or jurisdiction over a sea area is an extension of powers exercised on land. Inhabitants of coastal areas have always to some extent used the nearby sea for various purposes: for instance transportation, fishing or whaling, as in the Greenland case. As the development of technology continually provided more improved and effective vessels, the coastal states had to protect themselves against hostile intruders, and to protect the fishing possibilities of their inhabitants. Therefore territorial waters and fishing zones were declared. And as the exploitation of the sea-bed became profitable in the second half of this century, continental shelf lines and economic zones were demarcated.

5.1.1. The coastal line.

Prima facie, one would say that the coastal line is where the land ends and the waters begin. But it is not that simple, particularly in the Greenland case, where ice often dominates the waters.

It is generally accepted, that ice formations of a relatively permanent nature, contiguous with the land domain, can be treated as land for the determination of the legal coastal line[1]. However, most ice surrounding Greenland breaks up in the months of spring, and cannot therefore be considered as land. On the coast of Greenland there is only one area, where ice formations at present are of real significance to the determination of the coastal line. This is to the north at the eastern most point of Greenland, where a glacial fringe of the ice cap continues into the sea, hiding the outer edge of the land mass. This part of the ice cap fully satisfies the demands for permanence and stability, and therefore the edge of

---

[1] See Molde (1982): "The status of Ice in International Law" 51 NTfIR 165 (1982).

the ice cap in this place must be regarded as the coastal line[2].

The legal coastal line is not only where land and ice reach the water. Seen from a ship at the sea, land mass, islands and rocks, regardless of fjords and sounds, altogether seem to form a coastal line. As regards the determination of fishing zones and territorial sea, the coastal line is a base line fixed in the same way by law. The Greenlandic base line is determined as a straight coastal line drawn along the land mass and islands; in inlets and fjords, however, this is determined as a straight line drawn across the inlet or fjord at the point closest to the mouth of such inlet or fjord, where the width does not exceed ten nautical miles[3],[4].

5.1.2. The territorial waters.

The harbours, inlets, fjords and the waters of the archipelagoes are called the internal waters, whether or not they are covered by ice. The outer territorial sea by law is fixed as the waters between the above mentioned base line and a line drawn three nautical miles seawards off the base line[5]. The Danish– Greenlandic territorial sea is only three nautical miles wide, but the Law of the Sea Convention (LOS), art. 3, opens the possibility of a 12 nautical miles territorial sea.

5.1.3. The continental shelf.

---

[2] According to Molde (1982), pg. 166. At this place called Nordostrundingen, the edge of the ice–foot moves a maximum of 1 meter (3 feet) in ten years, in addition to which the ice– foot practically rests on the bottom of the sea.

[3] Act no. 191 of May 27th 1963 with later amendments. For an English translation, see Durante & Rodino (1983): "Western Europe and the development of the Law of the Sea", vol. I, section Denmark, pg. 31ff.

[4] 1 Nautical mile is 1852 metres. For instance the definition is laid down in art. 1 of Act no. 597 of December 17th 1976.

[5] Act no. 191 of May 27th 1963. This is also consistent with section two of the United Nations Convention on the Law Of the Sea (LOS). The LOS has not yet entered into force. It was opened for signature in December 1982.

In 1963 Denmark ratified the United Nations Convention on the Continental Shelf[6], and subsequently an Act on Danish sovereignty of the continental shelf was adopted[7],[8]. In accordance with art. 1 of the Convention and according to art. 2, par. 1, of this Act "the term "continental shelf" is used to refer a) to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; b) to the sea-bed and the subsoil of similar submarine areas adjacent to the coasts of islands".

This is the law in force, which is generally recognized by the states of the world. In practice, the 200 metres depth rule is rather clear. Because the continental shelf is outside the territorial sea, and if the 200 metres depth rule were the only rule, there would be almost no continental shelf neither in the Nares Strait to the north west nor off East Greenland. Off North and North East Greenland, the shelf would measure up to 50 nautical miles. In West Greenland it would also be up to 50 nautical miles, but most places approximately only 25 nautical miles.

But as the above mentioned Act extends the continental shelf to where the depth of the superjacent waters allows the exploitation of natural resources, the continental shelf line moves outwards with the same speed as the improvement of exploitation technology.

Therefore the LOS Convention, which has not yet entered into force, aims to fix the limits of the continental shelf more precisely. According to art. 76, par. 1, the shelf line is 200 nautical miles outside the base line, except in areas of submarine natural prolongation

---

[6] The convention opened for signature in Geneva, April 29th 1958, and was ratified by Denmark May 31st 1963.

[7] Act no. 259 of June 7th 1963 with subsequent amendments. See Durante & Rodino (1983), pg. 55f.

[8] The convention speaks only of exercise of sovereignty as this concerns exploration and exploitation of natural resources. It is, however, a full and natural sovereignty. The International Court of Justice stated in the North Sea Continental Shelf cases (ICJ Reports 1969, pg. 29, par. 39), that "the right of the coastal state to its continental shelf area is based on its sovereignty over the land domain of which the shelf area is the natural prolongation into and under the sea". In the Aegean Sea Continental Shelf case the court stated: "In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal state" (ICJ Reports 1978, pg. 36, par. 86).

of the land territory, in which case the line is drawn 350 nautical miles off the base line[9].

5.1.4. Exclusive economic zone.

In 1975 Iceland established a 200 nautical miles wide economic zone, as did Norway in 1976 along her continental coast. The USA and USSR established 200 nautical mile fishing zones in 1976. From 1 January 1977 the EEC countries established 200 nautical miles fishing zones in the North Sea and the North Atlantic[10]. In the mid 70's the United States expressed the wish to establish a parallel system concerning sea-bed mining. The EEC countries, including Denmark, followed this development, and on June 12th 1980 Denmark proclaimed an exclusive economic zone of 200 nautical miles round Greenland.

In the exclusive economic zone, the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds[11].

The economic zone regulations should not be seen as in opposition to the continental shelf rules, but as a complementary part of these. There can be a continental shelf where there is no exclusive zone, but there cannot be an exclusive zone without corresponding continental shelf[12]. In practice, the economic zones are now regarded as 200 nautical mile

---

[9] Claims are possible for plateaus further out under certain circumstances. See art. 76, par. 5 and 6, and Schusterich (1984): "International Jurisdictional Issues in the Arctic Ocean" 14 ODIL 239 (1984). The submarine natural land prolongation concept is consistent with the theories of the International Court of Justice mentioned above in footnote 8.

[10] See Greenlandic fishing boundaries regulations in Danish Acts no. 629 of December 22nd 1976 (which also can be found in Durante & Rodino (1983), pg. 155ff.) and 176 of May 14th 1980.

[11] According to art. 56, par. 1 of the LOS Convention. The convention in art. 57 recognizes the breadth of the zone as 200 nautical miles from the base lines.

[12] Cf. para. 34 in the arbitral award in the 1985-dispute between Libya and Malta, 25 ILM (1985).

limits of the continental shelf. This is also consistent with the LOS Convention[13].

5.2. The marine border lines and disputes

In the section above the regulations governing the limits of various marine zones were explained. In practice, however, the zones often do not reach their legal outer limits, because opposite or adjacent coasts or zones of other states create a limit. In this event the outer line has to be drawn by negotiation, more or less according to custom of international law. This section is an overview of the factual marine borders surrounding Greenland, and as will be seen, a number of unclear and unsettled disputes exist.

5.2.1. The North Atlantic Ocean.

In the North Atlantic Ocean, which in this connection means off East Greenland, there are latent disputes with Norway and Iceland. There are no problems concerning land boundaries, as there is open water between the states throughout the year; nor are there any problems concerning the outer limits of the territorial seas. The problems arise when it comes to the economic zone and the continental shelf. If it was only the 200 metres depth rule in the Continental Shelf Convention that applied, there would be no problems, because the sea is approximately 3 kilometres deep between the Greenlandic and the Norwegian territory, and in the region of 500 metres between Greenland and Iceland. But the three countries concerned have all proclaimed 200 nautical miles economic zones.

5.2.1.1. The Greenland Sea.

This sea separates Greenland from some islands under Norwegian supremacy. The one island is Jan Mayen, and the others are the group called Svalbard (Spitzbergen and surrounding islands). Though they are both Norwegian, there are highly different legal issues in question.

---

[13] According to the LOS Convention art. 76, par. 1, the continental shelf zone is a minimum 200 nautical miles wide, which in accordance with art. 57 is also the breadth of the exclusive economic zone. Where the continental shelf due to natural submarine prolongations of the land, exceeds the 200 nautical miles line, and extends to a maximum of 350 nautical miles, in accordance with art. 76, par. 5, the coastal state, because it is outside its economic zone, and in respect of the exploitation of non-living resources in these areas, shall make payments or contributions to authorities under the United Nations, in pursuance with art. 82

5.2.1.1.1. Svalbard.

The question of the legal status of Svalbard has been discussed ever since the 1870's. On February 9th 1920 the so called Spitzbergen-treaty[14] was signed by 40 states, including Norway, Denmark and the Soviet Union. Svalbard was placed under Norway's full and unlimited sovereignty; although as a de-militarized zone. The treaty provides citizens of other states equal rights to conduct fishing, mining etc. on the islands, including a 4 nautical miles territorial sea.

At this point of time Denmark has established a 200 nautical mile exclusive economic zone around Greenland, whilst Norway has not carried out similar measures for Svalbard[15]. As no economic zones overlap in this area at present, the Greenlandic economic zone legally extends out to the 200 nautical miles limit, which is rather close to the border of the Svalbard territorial sea.

Not having proclaimed an economic zone around Svalbard, because of the delicate questions surrounding Norwegian sovereignty, the Oslo government has, however, a rather clear opinion on this. According to the government, Svalbard does not have a separate or distinct continental shelf, since the shelf around the archipelago is part of the broad mainland Norwegian continental margin. Consequently, Norway interprets the 1920 Treaty as limiting the other signatories' mineral exploitation rights to the land area and the territorial waters, allowing Norway sole rights over the shelf resources beyond the 4 mile limit[16].

Even if an economic zone around Svalbard was proclaimed, it would have to be in

---

[14] See Legue of Nations Treaty Series 1920-21, vol. II, pg. 8ff.

[15] In 1976 Norway established a 200 nautical miles wide economic zone along her mainland coast. In May 1980 an economic zone was also proclaimed around Jan Mayen. An economic zone has never been established around Svalbard. However, the Norwegian parliament has adopted an Act proclaiming an 200 nautical miles wide fishery conservation zone around Svalbard in 1977. See Theutenberg (1983): "The Arctic law of the Sea" 52 NTfIR 23 (1983).

[16] See Schusterich (1984), pg. 258. The Norwegian jurist C.A. Fleischer supported the view of the Norwegian government in Fleischer (1975): "Oil and Svalbard" 45 NTfIR 7 (1976). The view is reiterated in Fleischer (1979): "The Northern waters and the new Maritime Zones" 22 GYIL 100 (1979). Another Norwegian jurist, Atle Grahl-Madsen, see Grahl-Madsen (1980): "Oekonomisk sone rundt Jan Mayen" 49 NTfIR 12 (1980), does not regard the areas north and west of Svalbard as a prolongation of Norway's own continental shelf.

respect of an equidistant maritime line towards Greenland, which would leave the Greenlandic zone a minimum 100 nautical miles wide at the most narrow point. It has, however, been proposed that only areas east of the 10* East longitude should be regarded as the Svalbard economic zone[17]. This would leave Greenland with almost 200 miles of a nautical zone.

5.2.1.1.2. Jan Mayen.

Jan Mayen is a rock of 373 square kilometres, located between Svalbard and Iceland, and closer to Greenland than to Norway. It is uninhabited, except for scientists and researchers.

The distance between Svalbard and Jan Mayen is so great, that the Greenlandic economic zone extends to its full 200 nautical miles breadth in between.

By an Act of February 27th 1930 Jan Mayen became part of the Kingdom of Norway. In May 1980 Norway established an economic zone of 200 nautical miles round the island of Jan Mayen. And in June 1980 Denmark established the 200 mile zone round Greenland, with the result that the two zones now overlap, as the entire distance between Greenland and Jan Mayen is only in the region of 200 nautical miles.

The Norwegian government has expressed its wish to divide the sea along the median, equidistant line between; but the Danish government does not accept this. Denmark recognizes Norwegian sovereignty over the rock, but claims that the rock ought not to have its own economic zone or continental shelf to the disadvantage of Greenland, because the rock cannot sustain human habitation or economic life of its own. The matter is now pending before the Court in the Hague. The Danish point of view is supported by the LOS Convention[18], and this point of view has been supported by a Norwegian jurist[19]. Norway has also accepted full extent for the Icelandic 200 mile economic zone, and has thus

---

[17] Grahl-Madsen (1980), op.cit. The 10*E. longitude is a border line of the so called Svalbard rectangle, fixed by the Spitzbergen Treaty.

[18] Art. 121, par. 3, has such a formulation. See also the interpretation of this article in the report of the Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen, reproduced in 20 ILM 797 (pg. 804)(1981).

[19] Grahl-Madsen (1980), op.cit. pg. 3ff.

modified its own demands concerning Jan Mayen[20]. It has been suggested, however, that the position of Norway in relation to Iceland was caused by political issues relating to NATO and the Keflavik base[21].

5.2.1.2. The Danmark Strait.

Greenland is separated from Iceland by the Danmark Strait, which at its most narrow point is approximately 150 nautical miles wide. The depth is in the region of 500 metres.

At this point of time no treaty has been adopted concerning the continental shelf between Denmark (Greenland) and Iceland, but it seems quite obvious, that the border has to be drawn as an equidistant line, measured from the base lines, as there are no particular submarine prolongations which work to the advantage or disadvantage of any of the parties.

5.2.1.3. Off South Greenland.

South of the latitude 63* North, the Greenlandic continental shelf and economic zone extends to the full 200 nautical miles, at both the eastern and the western side of South Greenland. However, the continental shelf does not extend any further out, as there are no submarine prolongations extending far out to sea. The 2500 metres depth line is less than 100 nautical miles away from the coast around South Greenland.

5.2.2. Davis Strait, Baffin Bay and Nares Strait.

By the Canada/Denmark Maritime Boundary Delimitation Agreement signed on December 17th 1973[22], Davis Strait, Baffin Bay and Nares Strait was divided along an equidistant maritime line.

However, there is a minor gap in this maritime boundary line. It relates to Hans Island, a small, uninhabited island less than 1 mile long lying between Greenland and Ellesmere

---

[20] By agreements of May 28th 1980 and October 22nd 1981 between Norway and Iceland. See Agreement on the Continental Shelf between Iceland and Jan Mayen, 21 ILM 1222 (1982), and Theutenberg (1983), op.cit. pg. 25.

[21] See Elliot L. Richardson (1988): "Jan Mayen in Perspective" 82 Am.J.Int.L. 443 (1988).

[22] See Lovt. 1974, vol. C, no. 68 of July 23rd 1974, pg. 252ff, and Canada Treaty Series 1974, no. 9.

Island in Nares Strait at latitude 80* 49' North. Both Canada and Denmark claim sovereignty over the island, which straddles the median line between Greenland and Ellesmere Island. Therefore the countries agreed to disagree over the judicial status of Hans Island, and the continental shelf boundary was drawn up to a low water mark at the south end of the island, and the boundary was resumed again from the low water mark at the north end. Furthermore, the agreement denies any jurisdiction over contiguous waters and continental shelf to whatever party, which is eventually able to sustain its claim to the island. The only problem which therefore remains is the question of the title to the rock itself, which appears to be of only minor interest[23].

5.2.3. The Arctic Ocean.

The Arctic Ocean is for the most part covered with permanent pack ice, which makes it impossible to navigate with ordinary ships. In the coastal areas ice-breakers can get through part of the year, but the rest of the ocean is only for submarines. Because of this unique situation, the legal situation of the Arctic Ocean is quite different from other oceans and seas. In fact, the status is not very clear, and has not yet been finally settled. However, the LOS Convention offers reasonable solutions, but as this convention has yet not entered into force, the other solutions as regards the Greenlandic share of the ocean have to be mentioned here.

5.2.3.1. The sector theory.

The sector theory is an uniquely Canadian theory, and it has never been supported by other states. It is a claim, that each state with a continental coastline automatically falls heir to all the territory lying between its coastline and the North Pole[24]. Therefore a "sector" from longitude 60* W. to 141* W. up to the North Pole has appeared on Canadian maps from 1904 to the present.

The 60* W. longitude goes down through the middle of the northern mouth of the

---

[23] See Wang (1976): "A comment on the Arctic in question" 14 CYIL 307 (1976) and Schusterich (1984) pg. 248f.

[24] See Reid (1974): "The Canadian claim to sovereignty over the waters of the Arctic" 12 CYIL 114 (1974) and Schusterich (1984) op.cit.

Nares Strait, which is the international boundary between Canadian and Danish territory.

The Canadians do not regard the Arctic Ocean as a high sea, because it is ice covered, and therefore they think it possible to make claims extending the territory several hundred nautical miles seawards.

However, the sector theory does not offer any solution to the drawing of a eastern boundary line for the Greenlandic part of the ocean. Is it the 10* W. longitude, because this is the eastern most point of Greenland, or is it the 0* longitude, because this is about the middle between Greenland and the Svalbard Islands? Is it the 10* E. longitude, because the Greenlandic 200 nautical miles line limit is drawn there, or is it round the 30* E. longitude, where the Soviet line is, because Svalbard does not have a continental shelf?

The sector theory does not seem very developed or applicable[25]. Furthermore; why is the North Pole used as apex of the sector, as it would be more reasonable to use the middle point of the ocean as center of partition, as it is the ocean and not the North Pole, that is to be shared[26]?

5.2.3.2. High Sea and equidistance.

After reaching the drifting ice masses of the North Pole, Admiral Peary in 1909 offered the Pole to the United States, but President Taft refused to accept the offer. The United States have always regarded the Arctic Ocean as high seas, which the other surrounding states, including Canada and despite her theoretical sector–theory, have also in practice[27].

Denmark has claimed a 200 nautical mile economic zone around Greenland. Eastwards the consequence is that the Danish zone reaches the 10* E. longitude north of Svalbard[28].

---

[25] Donat Pharand concludes at pg. 79 that the sectory theory cannot serve as a root of title for the acquisition of sovereignty to areas of the sea; See Pharand (1988): "Canada's Arctic Waters in international law" Cambridge University Press, Cambrige (1988).

[26] Such an Ocean Center Theory would make the Danish sector twice as big.

[27] See Molde (1982) pg. 167f.

[28] The Danish zone reaches this 10*E. longitude north of Svalbard also in the case that Denmark accepts a 200 nautical mile zone round Svalbard. At this point in time Svalbard has not established a 200 nautical miles zone, as described in chapter 5.2.1.1.1. above.

Northwards the Danish zone reaches more than half way to the geographical North Pole. To the west, the Danish zone is limited by the Canadian sector from 60* W. longitude. However, if the Canadians gave up their North Pole sector theory, and instead adapted a zone like the Danish, then Denmark would have to accept an equidistant maritime line as border, which would imply that a part of the present Danish zone, located in the Lincoln Sea east of the 60* W. longitude, would be Canadian[29].

5.2.3.3. The LOS Convention.

If the Law of the Sea Convention by ratification enters into force, the problems of partition of the Arctic Ocean will quite clearly be solved. A high sea will then exist in the middle of the ocean. The Danish continental shelf will reach its full 200 nautical miles limit, and even further out to the 350 nautical miles limit, because the Lomonosov Ridge, which extends north of Greenland, is a natural submarine prolongation that fulfils the requirements of art. 76[30]. This incidentally entails, that the geographical North Pole almost become under Danish sovereignty, because the North Pole is within the range of 381 nautical miles distance from Greenland and because the submarine Lomonosov Ridge tangents the geographical point of the North Pole.

Art. 234 of the Convention also provides the coastal state the power to adopt particular laws regarding the pollution of ice covered seas.

Finally, it must here be mentioned that the LOS Convention to a large extent is a codification of practice developed over time in international law, and the text of the Convention thus reflects the standpoints of existing law in force.

5.3. Conclusion regarding the Greenlandic zone.

As mentioned at the beginning of this chapter, the Greenlandic offshore area is extremely extensive. There is no doubt about that.

Exploitation technology will not become so developed within this century or the first

---

[29] However, against such change in Canadian attitude, the Danes could claim that the boundary along the 60*W. longitude is established permanently by an unwritten, bilateral agreement, through tradition and implicit Danish acceptance, as well as Canadian acceptance of the Greenlandic 200 nautical mile zone.

[30] See Schusterich (1984) pg. 237ff.

part of the next, that any of the disputed Greenlandic offshore areas will be considered to offer practical possibilities for exploitation.

In the meantime, before exploitation becomes possible, the disputes will probably be settled, with regard to the guidelines of the LOS Convention; and the disputes can probably be settled in good faith, as the disputes involve no basic or essentially important issues of a substantive character relating to the economic existence of the states.

6. THE EEC-CONNECTION

6.1. INTRODUCTION

On March 25th 1957[1] the European Community (EEC) was established by six European nations: Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands. On January 1st 1973 Ireland, the United Kingdom and Denmark joined the Community[2]. Being part of Denmark, Greenland also therefore became a part of the European Community.

Greenland entered the European Community despite the fact that geographically Greenland is a part of America and despite its great distance from Europe. Twelve years after her accession, Greenland resigned its membership of the EEC. It is perhaps inappropriate to use the terminology "entry" and "resign", since Greenland never actually became an independent member of the EEC; moreover, the treaties never applied fully in Greenland due to the fact that Greenland for the 12 years in question enjoyed the rules of a transitional period. Furthermore, Greenland has not fully left the EEC since Greenland is still an integral part of the Danish Realm; and Greenland now enjoys the status of overseas countries and territories (OCT) associated with the EEC[3].

The EEC never had a great impact in Greenland and on the inhabitants of Greenland. The most important impacts were the transfer of subsidies for development, and regulation and limitation of the catch of foreign vessels in Greenland waters. It can be added that foreign fishery and transfer of capital still take place under the new OCT-association status.

In the field of raw materials and exploitation, EEC membership did not have any major impact, so this chapter is included on the one hand to explain what impact the EEC--

---

[1] By the so called EEC-treaty and the EURATOM treaty of the same date. Together with the Coal- and Steel-Community-treaty of April 18th 1951, these treaties form the legal basis of the European Community.

[2] As regards Denmark, see Act no. 447 of October 11th 1972, Lovt. A 1972, pg. 965 ff.

[3] By amendment of the treaties of March 13th 1984, cf. Danish Act no. 259 of May 28th 1984.

connection did have and still has; and on the other hand to explain how the EEC plays no important role at present as regards the raw materials of the Greenlandic subsoil.

6.2. GREENLAND'S ENTRY INTO THE EEC

The Realm of the Kingdom of Denmark comprises Denmark, Greenland and the Faeroe Islands. Unlike the Faeroe Islands, Greenland did not enjoy local autonomy or home rule at the time Denmark applied for membership of the EEC. Local autonomy was considered a necessary precondition to allow a separate decision in relation to the EEC[4]. According to the Danish constitution, Greenland and the Faeroe Islands are equally integral parts of the Danish Realm, but because of the differences at that time in the level of local autonomy, the Faeroe Islands were given a free choice as regards the EEC question, while Greenland had to follow Denmark, although with due regard to special Greenlandic circumstances and wishes.

In 1967 the Greenlandic Provincial Council was asked its opinion on the EEC question, and it unanimously answered that Greenland should enter the EEC if Denmark did so, since Greenland had earlier expressed her wish to be a part of Denmark. In 1967 the Greenlandic members of the Danish parliament also voted in favour of Danish application for membership of the EEC.

In May 1971 the parliament decided that a referendum on the membership question should be held in Greenland and in Denmark on October 2nd 1972. In Denmark there was at the time of the referendum a large majority in favour of EEC membership, which ensured that Denmark, including Greenland, joined the Community from January 1st 1973.

Since a large majority of the Danish votes were in favour of the EEC membership, it did not have much significance that 70.3% of the poll in Greenland voted against the accession to the EEC, and that only 29.7% of the poll was in favour of accession[5].

---

[4] Both the Danish government and the Greenlandic members of the Danish parliament were of this opinion. See Harhoff (1979): "Groenland og De Europaeiske Faellesskaber" 16 Retfaerd 74ff (1979).

[5] 57.5% of the voters used the right to vote. 9598 persons against accession and 4062 persons in favour of accession.

6.3. THE "MEMBERSHIP" PERIOD

By the Treaty of Accession of January 22nd 1972[6], which entered into force on January 1st 1973, the Kingdom of Denmark joined the European Community. Thereby the three basic Community treaties, as well as Community directives and regulations, also applied to Greenland, unless otherwise expressly laid down.

6.3.1. Greenland in the treaties

During the membership period Greenland was never mentioned in the amendments of the three basic treaties (the EEC–treaty, the EURATOM–treaty and the Coal– and Steel–treaty) since Greenland was regarded as forming part of Denmark. In other words, all Community law applied fully in Greenland, unless anything to the contrary was expressly laid down. The first and most important exceptions were provided for in the Treaty of Accession.

In the Treaty of Accession Greenland was expressly mentioned in articles 100 and 101 concerning fishery. In accordance with these articles, Denmark for a ten year period could maintain an exclusive 12 nautical miles fishing zone around Greenland; for the first five years this zone would be open to vessels from both Denmark and Greenland and for the next five years to Greenlandic vessels exclusively.

Furthermore, to the Treaty of Accession are attached a number of protocols, which pursuant to art. 239 of the Treaty are to be regarded as integral parts of the Treaty itself. Protocol no. 4 concerned Greenland. As regards fishing, the protocol laid down that the Community institutions were to find, within the framework of the common organization of the market in fishery products, adequate solutions to the specific problems of Greenland. Moreover, Denmark was authorized to maintain the national provisions, which required six months of residence in Greenland prior to obtaining permission to conduct commercial activities there[7],[8].

---

[6] See Danish Act no. 447 of October 11th 1972.

[7] The Act on Commercial Fishing, Trapping and Hunting in Greenland, Act no. 413 of June 13th 1973.

[8] This provision was not inconsistent with art. 52 of the EEC– treaty concerning the freedom of

The rules on establishment and the rules on exclusive Greenlandic fishery were linked, since the requirement of six months of previous residence in Greenland to obtain permission to conduct commercial activities, prevented foreign fishermen from registering in Greenland in order to fish within the Greenlandic zone and quotas[9].

6.3.2. Other applicable community acts

As already mentioned, all community acts in principle applied to Greenland. But due regard was paid to the special Greenlandic circumstances in a number of the Community Acts.

For instance, special regulations concerning Greenland were inserted in art. 6 of the Council Regulation concerning the Duty value of Goods[10]. On January 1st 1978, however, Greenland became fully comprised by the Community custom area.

Greenland never became included under the Councils sixth directive on harmonization of national value added taxes[11],[12].

In annex I to the Decision on Direct Elections to the European Parliament[13] it is laid down that the Danish authorities may determine when elections are to be held in Greenland.

---

establishment of member state nationals, as it could be seen as the first step of progressive abolition of the national rules. Similar restrictions to the freedom of establishment exist concerning West Berlin.

[9] German fishermen caught engaged in illegal fishing have tried to claim without reason nor success that this was against the EEC-treaty. Such legal claims are, for example, advanced in the court of first instance, the Greenland High Court, in the cases reported in 116 UfR 800 (1982) and 116 UfR 811 (1982).

[10] Regulation no. 803/68 of June 27th 1968.

[11] Directive no. 388/77 of May 17th 1977.

[12] Similar exemptions are made as regards Helgoland and Busingen of Federal Republic of Germany, and Livigno, Campione d'Italia and the waters of the Lugano lake in Italy.

[13] Decision no. 787/76 of September 20th 1976.

The Convention on Court Competences and Execution of Judicial Decisions[14] expressly applies to Greenland also, according to its art. 60.

It can be added that there are no court cases reported in which Community law has been applied in Greenland; and that the European Court of Justice has not received cases originating in Greenland[15].

6.3.3. Economic subsidies

At the time Denmark joined the EEC, the Council accepted that the Danish governmental financial support for Greenland could be maintained as a purely internal Danish matter[16]. Danish financial support is of vital importance to the Greenlandic society.

In addition to the Danish financial transfers, the Greenlandic membership of the European Communities resulted in significant financial support from various EEC funds. Until 1982, Greenland had received a total sum of 49 million ECU from the Regional Development Fund; 2 million ECU from the FEOGA (the agricultural fund) and 28 million ECU from the Social Fund. Furthermore, 7 million ECU had been granted for special purposes within the field of locating energy sources; 8 million ECU for a sheep breeding program and 10 million ECU for fishery inspection. The European Investment Bank had granted loans to a total amount of 47 million ECU. The funds from the Regional Fund have mainly been used on infrastructure projects such as power-houses, storehouses, water-supply and quays. The grants from the Social Fund have covered expenditures on vocational training[17].

---

[14] Convention of September 27th 1968, as amended by the Convention of Accession of October 9th 1978.

[15] See, however, note 9.

[16] For example in 1986, the annual central government net expenditures in relation to Greenland were 2727 million DKK., the equivalent of 345 million ECU, according to "Statistisk Aarbog" 1989, table 468.

[17] See Harhoff(1983): "Greenland's withdrawal from the European Communities" 20 CMLR 13 (1983). Seen on background of the figures mentioned in note 16 above, the EEC subsidies do not appear to be of major importance in comparison to the Danish national expenditures.

6.4. GREENLAND'S WITHDRAWAL

It has been claimed that the more or less imposed membership of the European Communities, against the opinion of 70.3% of the Greenlandic voters in 1972, gave rise to the wish for local autonomy[18]. Local autonomy, so called Home Rule, was granted in 1978.

In April 1979 the Greenland Assembly (Landsting) was elected, and a majority of its members were opponents of the EEC. Subsequently, a guiding referendum was held on February 23rd 1982. 46.1% of the poll was in favour of the EEC membership, but 52 % against[19]. On this basis, the Greenland Assembly in April 1982 unanimously asked the Danish government to initiate negotiations with the Community, for the purpose of Greenland's withdrawal and the acceptance as an OCT country. This request was advanced by the Danish government to the EEC Council on May 25th 1982[20]. Extensive negotiations were to follow.

In June 1982 the European Parliament and the Commission were asked for their opinion, and in 1983 the Commission and the Parliament recommended Greenland's transmission to the OCT status. But before this point was reached, the issues of fishing rights and the legality of withdrawal were intensely discussed[21].

By a treaty of March 13th 1984[22], Greenland's status was changed from that of an

---

[18] See Harhoff (1979), op.cit.

[19] 12,615 votes against, 11,180 votes in favour and 470 votes invalid.

[20] See the statement on the procedures by the Foreign Minister, FT 1981/82, col. 6176.

[21] See European Parliament Doc. 1-264/83, Commission (83) 66 final and 593 final, Weiss (1985): "Greenland's withdrawal from the European Communities" 22 CMLR 173 (1985) and Lachmann (1985): "I Dag er Groenland uden Torsk og EF" Politikens Kronik, February 1st 1985.

[22] Published in Lovtidende as appendix to Act no. 259 of May 28th 1984.

area of a member state to that of Overseas Countries and Territories[23]. In accordance with art. 6, the treaty entered into force on February 1st 1985, when France as the last state had ratified it.

Articles 1 and 5 of the treaty are, respectively, amendments of art. 79, par. 2, litra a) of the Coal- and Steel-Treaty, and art. 198, par. 3, litra a) of the EURATOM Treaty; accordingly, these treaties no longer apply to Greenland. Art. 3 of the treaty grants Greenland the status of areas associated with the European Economic Community as established by the EEC Treaty.

6.5. THE OCT STATUS

6.5.1. OCT in general

Art. 3 of the treaty of March 13th 1984 provides an amendment of the EEC-treaty, as it inserts a new article 136a) into the EEC- treaty. Par. 1 of the new article 136a) lays down that articles 131 to 136 of the EEC-treaty apply to Greenland[24].

These articles on the association of overseas countries and territories constitute part four of the EEC-treaty[25].

The principal purposes of the OCT status are expressed in articles 131 and 132, which comprise essentially three aims: the promotion of social and economic development of the OCT areas; the establishment of close economic relations between these areas and the European Community en bloc; and non-discrimination in trade between the OCT and all

---

[23] According to Appendix I to Council decision no. 1186/80 of December 16th 1980, as amended by regulation no. 370/83, the following areas have obtained the OCT status: The Netherlands Antilles (The Netherlands), New Caledonia, the islands Wallis and Futuna, French Polynesia, South Polar Lands, Antarctis and Mayotte (French), Brunei, Anquilla, S. Kitts-Nevis, the Cayman Islands, the Falkland Islands, the Turks- and Caico Islands, the British Virgin Islands, Montserrat, Pitcairn, St. Helena, British Antarctic Territory and British territories in the Indian Ocean (United Kingdom). These OCT areas are not part of the Common Market like the French Departements Guadeloupe, Guyana, Martinique and Reunion are.

[24] By the OCT status, Greenland obtains closer connections to the EEC than the Faeroe Islands, which have only obtained certain special trade agreements.

[25] The preferences of the OCT status areas are similar to those granted to the developing countries under the Lome -Convention, see the Fourth ACP-EEC Convention of Lome, 29 ILM 783 (1990), in particular articles 99-104 and 214-219 concerning mining development and financing.

EEC member states, including the member state with which it has special relations.

As regards commercial objectives, more specific provisions are laid down in art. 133. According to this article, imports of goods originating in an OCT area shall on entry into the European Community enjoy the benefit of the total abolition of customs duties, equal to the abolition which takes place progressively between the member states. As regards the flow of goods going the opposite way, it is laid down that upon entry into each OCT area, customs duties imposed on imports from member states and from other OCT areas shall be eliminated to the same extent. The OCT may, however, levy such customs duties as are designed to meet their needs in respect of development and industrialization or which, as of a revenue producing character, are intended to contribute to their budgets.

The provisions governing trade relations are supplemented by those for financial arrangements; mainly art. 132, par. 3, which lays down that the member states shall contribute to the capital investment required for the progressive development of the OCT's. In practice, aid is given by means of subsidies from the European Development Fund and loans from the European Investment Bank.

Also of importance is art. 135 which lays down that agreements shall be concluded between the Community and the OCT areas concerning the freedom of movement within member states of workers from the OCT areas and within the OCT areas of workers from the member states. The freedom of movement, however, is to be subject to the provisions relating to public health, public safety or security and public order[26].

6.5.2. The protocol on Greenland

Pursuant to the aforementioned art. 136a) of the EEC–treaty, a new protocol on the special arrangements for Greenland has been adopted. This protocol is attached to the treaty of March 13th 1984, and is adopted as an annex to the EEC–treaty, so, therefore the above described rules in part four of the EEC–treaty only apply insofar as no specific provision has been laid down in the protocol.

Art. 1 of the protocol concerns an agreement in the field of fishing and fishery products. It lays down that fishery products originating in Greenland are exempted from

---

[26] Such agreements, however, have not yet been concluded. The migration question is therefore governed by national law.

customs duties and similar taxes, as well as from quantitative restrictions, when imported into a Community member state. A condition for the exemption is that the Community and the Greenlandic authorities reach an agreement, which grants Community fishing vessels satisfactory access to the Greenlandic fishing zones. It can be added that such an agreement has been reached for a five year period. The agreement provides the Community vessels with the right to continue fishing to an extent which is quite similar to the present scale. In return for these fishing rights, Greenland receives approximately 210 million DKK, the equivalent of 26 million ECU, annually from the EEC[27].

Then the protocol in art. 2 lays down that appropriate measures are to be taken as regards the rights obtained by persons during the period in which Greenland was part of the EEC. Presumably, this is mainly of importance to migrant workers; Greenlandic persons in Europe, or more likely, Europeans in Greenland.

Furthermore, art. 2 lays down that a solution shall be found as regards the Community's financial contributions to Greenland during the period of membership. So far no explicit agreement has been made.

6.5.3. National acts

As a consequence of the treaty of March 13th 1984, an Act on Change of Greenland's Status in Relation to the EEC[28] was adopted by the Danish parliament. The act amends a number of national acts.

The Danish Customs Act[29] is amended, so that Greenland is no longer part of the Danish customs area, and so that Greenlandic products are duty free on import to Denmark.

The Act on Denmark's Accession to the European Community[30] is changed, so that the Act of Accession and thereby the EEC– treaty only apply to Greenland insofar as it follows from the treaty of March 13th 1984. This means that the only EEC acts applying

---

27 See Lachmann (1985), supra, and Statistisk Aarbog (1989), table 467.

28 Act no. 259 of May 28th 1984.

29 Act no. 659 of December 15th 1982.

30 Act no. 447 of October 11th 1972.

to Greenland in the future are EEC acts adopted pursuant to art. 131 – 136a) of the EEC–treaty, and EEC acts ensuring the rights acquired by persons during Greenland's EEC–era.

Although EEC regulations and decisions which earlier applied to Greenland no longer apply, it is laid down that national acts and notices etc. issued in accordance with EEC rules or pursuant to EEC rules, are still in force until they are expressly amended or repealed.

6.6. RAW MATERIALS AND EXPLOITATION

According to art. 222 of the EEC–treaty, the treaty in no way prejudices the rules in member states pertaining to the form or type of ownership. This means that the EEC membership in no way affected the state ownership of the Greenlandic subsoil and raw materials, as this was laid down in the 1966 Mineral Resources Act for Greenland. Possible native limited prescriptive rights of use were not affected either.

Art. 86 of the EURATOM treaty lays down, however, that all special fissile materials are Community property. Pursuant to art. 197 special fissile materials are Plutonium 239 and Uranium 233 and 235, as well as products containing these isotopes. But Uranium–ore is not special fissile, and therefore it is not Community property. Since so far no Greenlandic Uranium–ore has been exploited and refined into special fissile materials, the Community did not acquire any property rights[31]. Now the EURATOM treaty no longer applies to Greenland pursuant to art. 198, par. 3, litra a). However, if the materials are imported into Denmark, upon entry they become Community property pursuant to art. 86.

Similarly, the Coal– and Steel–treaty no longer applies to Greenland, but the treaty will come into force in case of importation to Denmark of Greenlandic coal and steel.

As mentioned in section 6.3.3. above, the EEC has granted 7 million ECU for locating energy sources in Greenland. There were two projects on Uranium localization. Project "Syd–uran" was a three years prospecting program carried out between Kap Farvel and Ivigtut. The other project, named "Gamsaq" aimed to describe the total allocation of radioactive materials at Kvanefjeld near Narssaq. The research was carried out by the

---

[31] See Harhoff (1979), op.cit.

Greenland Geological Survey and the research institute "Risoe" of Copenhagen. The EEC was not involved in the West Greenland offshore explorations in the late seventies[32].

6.7. CONCLUSION

From a legal point of view, the European Community does not play an active role as regards the raw materials in the subsoil of Greenland and the future exploitation activities in this connection. This must be the conclusion of this chapter.

However, if the exploitation agreements by any means favorize Danish nationals or Danish companies to the disfavour of nationals or companies of other EEC countries, then there might be a conflict with art. 131–132. If Danish state authorities take part in such favourization, it is quite possible that the EEC authorities are competent to bring the matter before the European court. It is less certain whether the favourised private party can be sued. The new Act on Mineral Resources in Greenland[33] in its art. 9 indicates certain possibilities of favourization of Greenlandic enterprises, as well as Danish and Greenlandic labour. A conflict might thus be under way.

At the same time it has to be mentioned that the EEC may be of some political and financial importance to the exploitation, since Greenland has well established formal connections with the EEC, and since Greenland, which economically is far from self sustaining, may come to regard EEC policies as financial pressure; directly from the competent Community authorities or indirectly through Denmark.

Another point is the fact that the OCT status formally opens up the possibility for Greenland to approach the EEC authorities for support in the development of mineral exploitation etc., and in this connection Greenland as a minimum has the same possibilities as developing countries.

---

[32] The comments of Thylstrup might provide the opposite impression, see Thylstrup in Daintith, Terence C.(ed)(1981): "The legal character of petroleum licences: A comparative Study", at pp. 183–184.

[33] Act no. 335 of June 6th 1991.

7. ADMINISTRATIVE COMPETENCIES

The purpose of this chapter is to describe the organization of the administrative regime in Greenland, and to show how it functions in relation to the mineral resources. The description is relevant to the understanding of the procedure to obtain concession permits; in addition it is also important to see the functional background of the carrying out of the administrative tasks involved in running Greenlandic society. For this last reason, there follows first of all a description of the development of the administrative authorities.

7.1. HISTORICAL DEVELOPMENT

7.1.1. The colonial administrative regime.

From the time that colonization took place in 1721 the highest administrative power has been in Copenhagen. But over time more and more power has been delegated to local authorities. In the beginning, power was only given to Danes who were sent there; but quite soon the natives were consulted, and later native civil servants were appointed.

The main reasons for the colonization were trade, the extension of the royal power and the wish to christianize the natives. The church developed separately from the official administrative system, but especially in the beginning it was to a high degree financed by the government. The church split up into rival groups, the official Lutheran church and the Hernnhuters. The latter originated in Germany, and it was German missionaries, who were sent to this church, whose members erected their own church buildings and even made their own colonizations. However, the Hernnhuters left Greenland at the turn of this century, and all buildings were handed over to the official church. Both churches educated a large number of native catechists.

In 1728 the first Danish governor of Greenland was appointed[1], and in the following decades, a number of colonial settlements at the West Coast were established under the leadership of Danish tradesmen and merchants, mainly for the purpose of trading.

---

[1] Governor Claus Enevold Paars was appointed by king Frederik IV, however, the governor institution was not of much administrative importance at that time; it was more of military importance.

The colonial trade was organized under the Royal Greenland Trade Department in 1776[2].

The first comprehensive Greenland Act was given by the Danish absolute monarch in 1782[3]. Greenland was administratively divided into two parts, each with its own governor, the so-called inspectors. This was the first serious attempt to create an organized community, and this was aimed at protecting the population from being exploited by foreigners, including the Danish colonial crews.

In the following century the colonial staff was allowed to support the natives with food and weapons for hunting, where this was necessary for their survival. Social aid became institutionalized in 1862, when local councils were also established[4]. The members of these councils were the local Danish priest, the local Danish merchant and the heads of the native families. One of the tasks of the councils was to administer social aid, financed by taxes on local sales and luxury supplies.

By an Act of 1908 two provincial councils with native representatives were established, one for the north and one for the south[5]. Elections had also to be held for the local councils, and the Danes were no longer mandatory members; however, the Danes did obtain the right to vote by the establishment of universal suffrage in 1925[6]. From this time county councils were also established.

During the colonial period all major decisions concerning Greenland were made in Copenhagen; until 1849 these were taken by the absolute monarch, and later by the Danish parliament and government, in most cases represented by the Minister of the Interior.

7.1.2. The post-colonial period

---

[2] Kongelig Anordning of March 18th 1776.

[3] Christian the VII's Rescript of April 17th 1782.

[4] In an Act from the Minister of the Interior of May 7th 1862

[5] Act no. 139 of May 27th 1908

[6] Act no. 134 of April 18th 1925

In 1950 the Greenlandic administrative system was reorganized[7]. The local councils were reorganized as city councils, and one Greenland Provincial Council with native members from all of Greenland[8] was established, with one compulsory Danish member, the Danish Prefect or Governor, as chairman. It was this council that accepted the Danish constitution of 1953 on behalf of the Greenlandic population.

From 1967 the Danish Prefect was no longer a member of the council, and from that time on a number of specific administrative tasks were delegated to the Greenland Provincial Council. All governmental drafts for laws concerning Greenland had to be sent to the Greenland Provincial Council for comments before parliamentary debates. The same was the case for administrative acts made by the Ministry for Greenland. Before the introduction of Home Rule, the Greenland Provincial Council mainly held delegated powers with regard to wildlife preservation, local fishing and social matters.

The duties of the city councils were in the fields concerning social matters as well and minor local issues like roads, water– supplies and sports activities.

The prefect was the highest Danish authority in Greenland, and he supervised the schools, the church, the police, libraries, broadcasting and other services common to public authorities. The governmental authorities in Copenhagen were the in 1955 established Ministry for Greenland, under which there were a number of departments, offices and directorates, as described in section 7.2.2. below.

7.2. AFTER THE INTRODUCTION OF LOCAL AUTONOMY IN 1978

7.2.1. Non–transferable matters remaining with state authorities

As mentioned in chapter 4.3.5. an Act on local autonomy, the so–called Home Rule, was passed by the Danish parliament in 1978[9]. Home Rule is established within the

---

[7] Act no. 271 of May 27th 1950.

[8] Thule and East Greenland were not represented until 1961, and local administrative authorities with native members of the boards were not established in these areas until 1963. Greenland Provincial Council is a translation of Landsraad.

[9] Act no. 577 of November 29th 1978. For an English translation see Foighel (1979a): "Home Rule in Greenland" 48 NTfIR 4 (pg. 10ff)(1978).

framework of the Danish constitution and within the unity of the Kingdom of Denmark. This is stressed quite clearly in the Home Rule Act[10]. Legally, the Home Rule established can be regarded as a transfer or delegation of powers from the Danish parliament to the local authorities in Greenland. Earlier, all of these powers were delegated to the Danish government and administration, but now some of the powers instead have been transferred to Greenland, thus giving authority to the local authorities.

However, it must be clear that the powers of the local authorities derive from the Danish parliament, and therefore the powers are revocable; theoretically, the Home Rule powers can be withdrawn anytime by a new act. Obviously, the parliament cannot delegate any further powers than it has itself according to the constitution. From this it follows that matters institutionalized by the constitution cannot be transferred to the jurisdiction of the Home Rule authorities. Such matters are for example the administration of justice and the highest branches of government, the right to vote at parliamentary elections as well as eligibility, human rights and other constitutional rights[11].

From the principle of national unity it follows that matters concerning national finances, financial, monetary and currency policy and defence policy, as well as fundamental principles regarding family law, inheritance law, the law of persons and, of importance in this connection, the law of contracts, cannot be transferred to the jurisdiction of the Home Rule authorities.

All foreign relations are to be carried out by the state authorities; however, where Greenland's own commercial interests are concerned; the Home Rule authorities can request to send representatives[12].

7.2.2. The authorities in Denmark at present

In Denmark the administration of Greenland until 1987 was centralized in the Ministry for Greenland, except for a few areas falling within the jurisdiction of other ministries, for

---

[10] Very clearly in Article 1, as well as in the preamble.

[11] Of importance in this connection is the protection of private property, and the principle of no expropriation without full compensation.

[12] Article 10 concerning treaties, and Article 16 concerning Greenlandic commercial interests.

instance the courts, the police and defence.

In connection with the transfer of several competences to the Greenlandic authorities in 1987, the tasks of the ministry remaining in Denmark were divided among several ministries, although the Ministry of State took responsibility for most. The Ministry of Foreign Affairs is now also concerned with the problems of whaling. The Ministry of Finances handles the subsidies for Greenland, as well as wages and salaries. The Ministry of Justice is competent in relation to the administration of the courts, and in relation to legislation applying to family matters, foundations and property matters. The Ministry of the Defence administers the airports and airfields. Schools, education and science are under the control of the Ministry of Education and Research. The Greenlands Fisheries Survey, a separate institution, works under the auspices of the Ministry of Fisheries. The Ministry of the Interior looks after elections and referendums. The Ministry of Traffic and Communication is responsible for telecommunication, navigation and security.

Furthermore, the Ministry of Industry is competent in relation to commercial subsidies; the Ministry of Housing in relation to housing; the Ministry of Culture, the culture; and the Ministry for the Environment, the environment. The Ministry of Agriculture is the relevant ministry in relation to the veterinarian matters.

Within the competences of the Ministry of State, one may find relations with Home Rule Authorities, the social security authorities, the semi-independent Greenland Technical Organization, the semi-independent Royal Greenland Trade Department and coordination in general among state authorities.

The task of the Greenland Technical Organization is to provide a consulting and advisory service for all governmental and local authorities concerning technical planning. Furthermore, the Technical Organization administers and runs technical industries, garages, shipyards, powerplants, heating plants, water-supplies and sanitation, ports and the teleservices.

The Royal Greenland Trade Department, which was renamed Kalsallit Niuverfiat (K.N.I.) after the transfer of the supervision to the Home Rule authorities, secures the supplies of consumption goods, as well as commercial necessities. It also manufactures and exports Greenlandic products, and administers the transportation of goods and passengers, as well as runs the postal service and the civil airport in Sondre Stroemfjord.

One issue must not be forgotten; namely, the administration of non-living resources.

Until 1987 the Mineral Resources Administration was part of the Ministry for Greenland, but then it was moved to come under the auspices of the Ministry of Energy. The Mineral Resources Administration administers non-living resources and hydro power, as well as relations with concessionaires. It also works as a secretariat for the joint Danish-Greenlandic Committee on mineral resources. The administration of the non-living resources is dealt with in further detail in section 7.3. below.

7.2.3. Administrative tasks of the Home Rule authorities

In a schedule attached to the Home Rule Act 17 fields of administrative matters are listed, which the Home Rule authorities can decide shall be transferred to their jurisdiction[13]. The 17 fields listed are:

1. The administration system of Greenland.
2. The administration system of the communes.
3. Taxes, rates and dues.
4. The national church and the religious societies diverging from the national church.
5. Fishing in territorial waters, hunting, agriculture and reindeer-breeding.
6. Preservation of wildlife.
7. Country planning.
8. Trade and competition legislation, including legislation on restaurant and hotel businesses, regulations concerning alcoholic beverages and regulations concerning closing hours.
9. Social welfare.
10. Labour market affairs.
11. Teaching and culture, including vocational training.
12. Other trade conditions, including the State's fishery and production activities, trade subsidies and trade development.
13. Health service.
14. Rent legislation, housing subsidies and housing administration.
15. Supply of goods.
16. Internal passenger transport and goods traffic.

[13] Article 18 in the Home Rule Act.

17. Environment protection.

Over the last few years aspects of most of these issues have been transferred to the local authorities, and it is hoped that Home Rule be fully implemented by the end of this century.

A basic principle in establishing the Home Rule was that the legislative power and the power of the purse should not be divided. The Home Rule Act created an administrative regime and rules to be applied in the administration of independent financial responsibility for solving various tasks.

The Home Rule authorities comprise a popularly elected Greenland Assembly[14] and a Greenland executive administration, appointed by the Greenland Assembly[15]. The Assembly can authorize the administration with independent general powers.

If any doubt arises between the state authorities and the Home Rule authorities concerning their respective jurisdictions, the question is set before a board of judges of the Danish Supreme Court and other members appointed by the parties. It is, however, not possible to submit to the board questions regarding interpretations concerning the legality of various legislation. Such questions are to be decided by the ordinary courts under article 63 of the Danish constitution.

The highest Danish representative in Greenland is now the Greenland Ombudsman or Commissioner, who at present carries out almost the same tasks as the prefect did before the Home Rule Act[16].

7.3. ADMINISTRATION OF THE MINERAL RESOURCES

As mentioned in chapter 4.3.5. above, the current legislation in the mineral resources field consists partly of Article 8 in the Home Rule Act and partly of the Act on Mineral

---

[14] The so-called Landsting, according to Article 2.

[15] According to Article 3.

[16] According to Articles 17 and 20.

Resources in Greenland[17], which deals specifically with mineral resources and the establishing of the politico-administrative system governing the mineral resources field. The mineral resources scheme includes all non-living natural resources, comprising in particular mineral resources and hydro power.

The administrative regime convering mineral resources is based on a joint decision-making power of the state authorities and of the Home Rule authorities relating to the essential arrangements for non-living natural resources in Greenland[18]. In practice, this power functions as a reciprocal right of veto to both political authorities towards plans advanced by the administration

The right to veto conferred on both parties is to presuppose agreement between the government and the Home Rule authorities concerning the concrete major arrangements and concerning the determination of the superior principles, which altogether form a mineral resources policy. Exemples of the concrete arrangements to be agreed are the grant of licences and concessions and prolongations or alterations of these, as well as approval of the entire schemes for concrete exploitation industries. Also to be approved by the joint decision-making power is the implementation of natural resources activities by public authorities. The joint-decision making and the veto arrangement works very satisfactorily[19].

Until the amendment of the Mineral Resources Act in 1988, the public revenue deriving from the Greenlandic activities of concessionary companies was to be distributed in accordance with a principle laid down in the Mineral Resources Act, which stated that

---

[17] Act no. 585 of November 29th 1978, as entered into force by Act. no. 166 of April 25th 1979, and amended by Act no. 844 of December 21st 1988. In 1991 replaced by Act no. 335 of June 6th 1991.

[18] This joint decision-making power is expressed in Article 8, paragraphs 2 and 3, of the Home Rule Act, which in the formulation of Isi Foighel read as follows: (Par. 2) To safeguard the rights of the resident population in respect of non-living resources and to protect the interests of the unity of the Realm, it shall be enacted by statute that preliminary study, prospecting and the exploitation of these resources are to be regulated by agreement between the Government and the Landsstyre. (Par. 3) Before any agreement under subsection (2) is entered into, any member of the Landsstyre may demand that the matter be laid before the Landsting, which may determine that the Landsstyre may not consent to an agreement of the proposed content.

[19] According to Nielsen & Larsen (1985): "Groenlandsk raastofpolitik - groenlandsk indflydelse" 17 Politica 96 (1985).

public revenue of this kind should replace the subsidies, which the government grants Greenland by annual appropriations[20]. In pursuance of the 1988 amendment, article 22 of the 1991 Mineral Resources Act provides the following more detailed rules on the matter: Public revenue from the activities of concessionaires are to be shared fifty–fifty among the Danish State and the Home Rule authorities. Revenue includes income from specific concessions, except for fees covering specific expenditures; income from public sleeping partners in projects; income from taxation of companies and shareholders, where this income derives from concession activities. As a supplementary rules, article 22 provides that the division of annual revenue exceeding DKK 500 million shall be fixed by law in accordance with negotiation between the government and the Home Rule authorities.

Institutionalized by the Mineral Resources Act[21], a Danish–Greenlandic Joint Committee has been established as a consultative body for both the government and local authorities in matters concerning mineral resources in Greenland. It is the task of this committee to supervise the development in the mineral resources field, and it may submit recommendations to the government and the Home Rule authorities. The activities of the committee are described in annual reports. The committee consists of members, who are nominated equitably by the government and the Home Rule authorities, except for the chairman, who is appointed by the king. The Joint Committee was appointed in July 1979.

The governmental administrative tasks concerning non–living resources in Greenland are carried out by the Mineral Resources Administration of Greenland with subordinate institutions, all working under the Minister of Energy[22]. Like the chairman of the Joint Committee, the director of the Mineral Resources Administration is appointed by the king on the basis of a joint recommendation from the government and the Home Rule authorities. The Mineral Resources Administration handles the tasks as secretariat to the Joint Committee, and makes its expertise available to the committee. The Mineral Resources Administration also exercises public authority functions in the field of mineral

---

[20] It has been a political question, whether previous transfers from Denmark to Greenland also were to be repaid by the public revenue.

[21] Cf. article 4 of the 1991 Act.

[22] In accordance with article 5, as amended in 1988.

resources. The administration is carried out under the responsibility of the Minister within the framework laid down through joint decisions made by the Home Rule authorities and the government.

The Mineral Resources Administration makes use of the know– how and capacity provided in the separate institutions Greenland Geological Survey (GGU), Greenland Technical Organization (GTO), Greenland Fisheries and Environment Research Institute (GFM) and the Royal Greenland Trade Department (KNI).

Applications and inquiries concerning mineral resources etc. in Greenland are in the first instance to be addressed to the Mineral Resources Administration.

8. ON LAWS AND JUSTICE

This chapter gives an overview of the laws in force in Greenland[1], which are for the most part similar to those of Denmark. The Danish legal regime in its turn is similar to the legal systems in the rest of Scandinavia, and is also comparable to the systems in the rest of the European continent. Although Greenlandic law is to a large extent the same as Danish, some divergences necessary for the adjustment to Greenlandic conditions can be noticed. An extensive treatment of the Greenlandic and the Danish legal systems in detail is beyond the scope of this chapter[2]. The aim is rather to point out major differences from the Danish system, in particular as regards the exploitation concessions, and therefore in particular in relation to laws regulating land use and title.

8.1. LEGISLATION

As described earlier, Greenland by the 1953 revision of the Danish constitution became an integral part of the Danish realm. In principle, this means that laws adopted by the Danish parliament after the change of the constitution are also automatically in force in Greenland, unless the law explicitly states otherwise[3]. This is, however, very often the case; moreover a number of laws also contain provisions, which make it possible to put them into force in Greenland by decree, with the adjustments required for particular Greenlandic conditions. Furthermore a number of laws applying only in Greenland have been adopted over time. Both the special laws for Greenland and the laws for all of the

---

[1] Some sections of the chapter draw heavily on the articles of former judge of the Greenlandic High Court, Henning Broendsted, see Broendsted (1970): "Groenlands rets- og politivaesen" 30 Trap 246, Broendsted (1978): "Lov og ret" Bogen om Groenland pg. 148ff, Broendsted (1983): "Groenland" Juridisk Formularbog pg. 946ff, and also Moeller (1984): "Det groenlandske retsvaesen" 118 UfR B 401 (1984).

[2] Regarding the Danish legal system; in particular, one book in the English language can be recommended: Hans Gammeltoft-Hansen, Bernhard Gomard & Allan Philip (ed.): "Danish Law. A general Survey" (G.E.C. Gad, Copenhagen 1982), 395 pages.

[3] Cf. Frederik Harhoff (1987): "Dansk rets gyldighed i groenlandske og faeroeske saeranliggender" 121 UfR B 347 (1987), who argues against practice established by the Supreme Court in a case deriving from the Faeroe Islands, reported in 120 UfR 314 (1986).

Kingdom of Denmark apply to all persons in Greenland, whether they are Inuits, Greenlanders, Danes or foreigners.

Legislation and regulations concerning Greenland can be found in a collection of laws published by the Ministry for Greenland[4]. Section A of the collection contains laws, decrees, orders as well as the regulations of the previous Provincial Council, while section B contains regulations of the communes, and certain governmental circulars. In section C one finds regulations concerning civil servants, wages and salaries, while section D contains the acts and regulations issued by the Home Rule authorities[5]. However, regulations from before 1958 may only be found in another collection[6], but all legislation in force is listed in an annually published register[7].

8.2. THE LAW OF OBLIGATIONS AND PROPERTY IN GREENLAND

Formerly there were almost no written rules on purchase and sale of goods, nor on other property matters. There was, moreover, no real need for regulations, because private trade took place only on a very small scale, and there were no private lending or other transactions needing particular protection.

But as development increased, and as a modern money economy succeeded the old barter economy, a need for legislation arose. So from 1965 on, the most important Danish laws in this field were put into force in Greenland[8]. Of the laws in question the following

---

[4] The name of the law collection is "Nalunaerutit – Groenlandsk Lovsamling".

[5] Adopted under the guidelines of articles 4 – 6 of the Home Rule Act, no. 577 of November 29th 1978.

[6] "Kundgoerelser vedroerende Groenland".

[7] "Groenlandsk Lovregister".

[8] By Acts no. 104 and 105 of March 31st 1965, 350 of July 14th 1980 and 488 of September 25th 1981.

can be mentioned: The Sale of Goods Act[9], the Promissory Notes Act[10], the Contract Act[11], the Bills of Exchange Act[12], the Cheques Act[13] and the Commission Act[14],[15].

Concerning mortgage, the Act for Greenland on Mortgage[16] provides, that mortgage deeds in buildings[17] and chattel have to be registered to enjoy legal protection. The Greenland High Court keeps the register[18].

It is a question whether companies with registered principal offices in Copenhagen or in some other part of Denmark also have to register their mortgages at the court of the circuit, in which their offices are located, in accordance with art. 43 of the Danish Land Registration Act[19]. This should not be necessary, because this Act as such explicitly does not apply in Greenland, and because the Greenlandic High Court keeps the afore mentioned

---

[9] Act no. 102 of April 6th 1906, as by Act no. 28 of January 21st 1980, and amended by Act no. 733 of December 7th 1988.

[10] Act no. 146 of April 13th 1938, as by Act no. 669 of September 23rd 1986.

[11] Act no. 242 of May 8th 1917, as by Act no. 600 of June 8th 1986.

[12] Act no. 68 of March 23rd 1932, as by Act no. 559 of August 25th 1986.

[13] Act no. 69 of March 23rd 1932, as by Act no. 558 of August 25th 1986.

[14] Act no. 243 of May 8th 1917, as by Act no. 636 of September 15th 1986.

[15] Regarding these Danish Acts, see the earlier mentioned book: "Danish Law. A general Survey". Several of the Acts have been translated into foreign languages.

[16] Act no. 154 of May 10th 1967, as changed by Act no. 34 of January 31st 1979.

[17] Land mortgage is not possible, because there is no private ownership to land, as described in chapter 8.3.3. below.

[18] In accordance with Act no. 435 of November 28th 1967 and later circulars.

[19] Act no. 622 of September 15th 1986. Art. 43 provides that mortgage in chattel have to be registered by the court, where the company has its registered domicile.

register of all Greenlandic mortgages. Until the issuance of the 1991 Mineral Resources Act, the concessionaires explicitly had to register their mortgages at the Court of Copenhagen, according to art. 29 of the 1978 Mineral Resources Act[20]. Pursuant to art. 7 of the 1991 Act, the concessionaires now as a main rule have to register a main domicile in Greenland, whereby the registration of deeds take place with the Greenlandic High Court.

8.3. LAW OF LAND

8.3.1. Which land?

Of particular importance in connection with mineral exploitation activities is the law on land ownership and land use, especially with regard to areas where conflicts may arise between the interests of mining companies and the local population. This, however, is only a problem in the inhabited parts of Greenland, since in the rest of wide-flung Greenland, the mining companies can operate undisturbed.

8.3.2. Legal sources

In chapter 4 it was demonstrated that Greenland is under Danish supremacy, is part of the Danish realm and is under the rule of the Danish Constitution. It was also recognized that the Greenlandic population has a right to claim independence for the inhabited areas of Greenland. This, however, they have not done so far, and for the time being the Danish legal system is accepted. The Constitution applies, parliament has the power to pass acts, and Danish legislation is de facto recognized.

Therefore Danish legislation, Danish legal theory and Danish legal practice apply in Greenland. Broadly speaking, any Greenlandic claim or theory, which cannot be contained within the Danish legal regime, cannot obtain any legal recognition or protection, but would have to await the creation of a new legal system. This chapter is only concerned with rights recognizable by current Danish and Greenlandic legislation and legal custom.

---

[20] Act no. 585 of November 29th 1978, as amended by Act no. 844 of December 21st 1988. Now Act no. 335 of June 6th 1991.

8.3.3. Ownership of land

In Greenland there is no private ownership of subsoil or surface land, whatsoever: Both are considered part of state property[21]. There might be private rights of use, but no private ownership. If private ownership were to be established, it would have to be by law.

Some of the historical and theoretical background to this state property situation has been discussed in chapter 4. In the laws and the legal practice of the last fifty years one finds the visible indications and the legal recognition of this situation.

Art. 1 of the 1935 Mineral Resources Act[22] states that "Raw materials in Greenland's soil belong to the Danish state". But pursuant to art. 2 the population has full rights to utilize coal, peat etc. as usual[23]. In the succeeding Mineral Resources Act of 1965[24] in art. 1, it is stated that "All mineral raw materials in Greenland belong to the state", and that the population may utilize coal, peat, gravel, stones etc. as usual. But then in 1978 the situation became more ambiguous[25]. The Home Rule Act states that the population has fundamental rights to the natural resources[26]. At the same time, the usual rights of the population became limited; in art. 30 of the 1978 Mineral Resources Act[27] is stated that the usual utilization of coal etc. has to be in respect of the exclusive concessions granted by the Minister of Energy, in accordance with the rules laid down in the same Act. Art.

---

[21] The Minister for Greenland clearly stated in the parliamentary debates November 24th 1964, that "In Greenland the State is owner of both the subsoil and the surface land". See FT 1964–65 col. 884.

[22] Act no. 153 of April 27th 1935.

[23] "As usual" presumably refers to the habitual utilization exercised in previous centuries, which includes utilizations, that the Inuits had learned from the Europeans.

[24] Act no 166 of May 12th 1965.

[25] Already in 1976 the Ministry of State in a letter of October 25th to the Home Rule Commission made the situation ambiguous by stating that state ownership was not a real property right. This is legally wrong, as mentioned by Espersen (1978), Bet. 837, vol. 2, pg. 34, and clearly proved by Sawicki (1981): "Lov om Mineralske Raastoffer i Groenland", pg 21 – 31.

[26] Art. 8 in Act no. 577 of November 29th 1978.

[27] Act no. 585 of November 29th 1978, as in force by Act no. 166 of April 25th 1979.

32 of the 1991 Mineral Resources Act has the same wording as art. 30 in the 1978 Act. In other words, when it comes to practice, it is true that it is a political statement only and not a legal fact that fundamental rights should be conferred on the population by the Home Rule Act[28]. Implicitly the Danish state is still regarded as proprietor of the raw materials.

One could claim, that the Danish state's ownership of the raw materials does not necessarily mean state ownership of land, but such a theory is not helpful in practice; firstly, because almost anything in and on the ground can be defined as raw materials; and secondly because the greatest proportion of the surface of Greenland in fact is solid rock. Agriculture is virtually non-existent. And as regards agricultural areas in South West Greenland, the Greenland High Court has stated in one judgement[29] that a farmer did not possess a property right, but only a right of use, since private ownership was precluded by legislation and general state title to regulate. Furthermore it was stated, that 25 years of use could not result in prescriptive title for the same reasons.

There is private ownership in the case of buildings, but at present they are legally treated as moveable chattel. Ownership of a building only provides one with the right to use the adjacent area. Such use is now planned through administrative regulations, as mentioned in chapter 8.3.7. below.

However, the fact remains that the land is state property, or at least under state authority, which makes little difference practically and legally. Private ownership of land can not be established through prescription, because private land ownership is not legally recognized, and de facto does not exist in Greenland.

8.3.4. Rights of use in legal theory

Although private ownership of land cannot be established through prescription, it might be possible, that private rights of use could be secured by prescription. Land use as such is at least legally recognized, and does de facto take place.

---

[28] This is in tune with the statements of the chairman of the Home Rule Commission, according to whom art. 8 only is something like a political sign of the good faith of the Danish state, and not subject to legal interpretation. See chapter 4.3.5.

[29] Hoeegh v. Ministry for Greenland (31 and 49/1969 Oestre Landsret), reported in 14 TfGR 93 (1978). The case concerned a sheep breeder, who in 1945 was given an area of some ten thousand square meters of land, where he for 25 subsequent years cultivated.

In Denmark the prescription rules partly consist of King Christian the Fifth's Danish Code of 1683, as well as older legislation[30], and partly of legal theory and practice developed about a century ago. The Danish Code has never been put into force in Greenland, but because prescription supports lawful claims, Danish legal theory in this field must also apply in Greenland in order to support such claims, which otherwise would be left without any legal protection at all.

According to the Danish Code, twenty years of use is required for a prescriptive right of use[31]. But if the use is not made visible by special contrivance, then immemorial use will be necessary, according to legal theory and practice[32].

Although some land is state property, this does not by itself exclude the possibility of private prescription. But if the private use is provided for by law, then prescription cannot take place[33]. However, if the prescriptive rights are gained before the legislation entered into force, the rights probably remain existent[34].

Customary rights are not recognized by Danish legal theory, except those concerning roads[35]. An attempt a century ago to introduce customary rights or prescriptive rights for

---

[30] King Christian the Fifth's Danish Code of April 15th 1683, 5th book, 5th chapter, and 3rd book, 13th chapter, 13th article (3-13-13). Among older legislation, the provincial laws from the 12th century can be mentioned, particularly the Jutland Code.

[31] According to Danish Code 5-5-2, cf. 5-5-1.

[32] A theory introduced by Oersted at the beginning of the 19th century. In practice 45 - 50 years of use is required in this case. The requirements of this visibility-theory as regards the nature of the contrivance, whether it is a fence, a track etc., is debated in legal theory. See Illum (1976): "Dansk Tingsret", pg. 437ff, and Vinding Kruse (1929): "Ejendomsretten II", pp. 539-543. See also Gerdes and Serup (1989): "Om Alderstidshaevd" 123 UfR B 67 (1989), and Berning (1982): "Property Law" in "Danish Law. A general Survey", pg. 186.

[33] See Illum (1976) op.cit. pg. 456ff.

[34] See Illum (1976) op.cit. pg. 458 with note 165.

[35] It has been debated whether Danish Code 3-13-13 provides this customary right, but the right concerning roads became generally accepted in the 1850's.

the general public never succeeded in practice in other fields[36]. Related to the question of general public prescription, however, is prescription for the common use of a limited number of people, for instance the inhabitants of a village. This was recognized by the Danish courts in a number of cases at the end of the 19th century. However, where the use was exercised by the general public, and not only by the limited local community, prescription was not possible[37],[38].

To claim prescription the use has to have been exercised continuously during the prescriptive period[39].

Prescriptive rights to hunt or fish in the salt waters of the sea territory can not be claimed, because by law and tradition it is a common and general public right.

8.3.5. Greenlandic land use in legal perspective

8.3.5.1. Towns and settlements.

It is generally recognized that the ownership of a house includes a right to use the lot on which it is situated and the adjacent land. Most towns, settlements and houses are established on the basis of legislation[40] or administrative decisions, and when this is the case, then the use is protected by law, and prescription can not be claimed.

8.3.5.2. Agricultural areas.

In 1906, the first sheep in modern time were imported to Greenland. In 1929 the first

---

[36] See Illum (1976) op.cit. pg. 424ff and pg 460ff.

[37] See Illum (1976) op.cit. pg. 467f with notes 189 and 190.

[38] A more recent Swedish case, published in ND 343ff (1969), stated, that two Sami communities could not as such obtain a special fishing right for reasons such as these.

[39] See Illum, op.cit. pg. 441f and 468ff.

[40] The most recent legislation is Act no. 612 of December 23rd 1980, cf. Greenland Assembly Act no. 1 of February 2nd 1981.

act on agricultural land utilization in South Greenland was given[41]. Therefore no prescriptive rights were established before the law, and subsequent agriculture is pursuant to law, and therefore no prescription can take place. In a recently published case[42], it was held that it was possible to withdraw permission to exercise agricultural land utilization, and that the state under these circumstances was liable to compensate only for possible land improvement.

According to art. 1 of the Notice on Land for Sheep-breeding in Greenland[43], the reservation of areas for sheep-breeding does not limit the Ministry's right to grant permits and concessions for mineral exploration and exploitation.

8.3.5.3. Local utilization of mineral resources.

The 1935 and the 1965 Mineral Resources Acts maintained the rights for the population to make usual use of natural resources[44]. This means that prescriptive rights of use concerning utilization commenced prior to the 1935 Act are possible. Furthermore, the laws may have to be interpreted in such a way that establishment of new prescriptive rights in usual scale was also possible[45]. The possibility of establishing new prescriptive rights was, however, brought to an end by the 1978 Mineral Resources Act[46],[47].

---

[41] An Act from the Ministry of the Interior of March 20th 1929, as published in "Beretninger og Kundgoerelser" 1929, no. 1.

[42] See chapter 8.3.3. and footnote 28 above.

[43] Notice no. 358 of July 27th 1979, cf. The Act for Greenland on Land Use, City Development and Settlement, Act no. 612 of December 23rd 1980.

[44] See chapter 8.3.3. with footnotes 23-27 above.

[45] This is a rather hypothetical issue. However, this is the conclusion if one assumes that the maintenance of the usual rights to the resources included a maintenance of the usual right to establish prescriptive rights to the resources. This is only possible, when one assumes that the laws did not intend to provide the usual rights by law, but instead expressly did not regulate this field, as prescription is not possible when the right is provided for by law.

[46] Act no. 585 of November 29th 1978, art. 30, par. 3, provides that the communes can regulate the utilization. Par. 2 states, that the usual utilization of minerals has to respect the rights of the concessionaires, cf. Act no. 335 of June 6th 1991, art. 32, par. 3. This might to some extent include an expropriation of older prescriptive rights of use. However, if no disputes arise, the older prescriptive rights of use presumably

The type of prescription in question is that which gives the rights to all the inhabitants of a local community on the basis of immemorial use. This community prescription has been legally pleaded without success in Denmark in a number of cases a century ago[48].

8.3.5.4. Hunting and fishing.

Hunting and fishing is regulated by law. The right to engage in hunting and fishing is a general public right within the limitations of the Wild Life Protection Act and various fishery acts[49]. As mentioned above, the right to hunt and fish in the salt waters by law is a free public right, and because it is a right given by law, it cannot be claimed as an exclusive, prescriptive right. In most places, however, it is in fact only the local hunters, who pursue these activities in the local area. And if only the local hunters have been hunting in a given area since time immemorial, thus pre-dating legislation, they may have established a prescriptive right of hunting for their community[50],[51]. If the hunters are disturbed in the exercise of their rights, they may well have the right to make claim for damages against the disturber. This, however, is only a very vague theory which attempts to protect the existence of the hunters, but such a theory is possibly inconsistent with

---

disappear by desvetudo after some time.

[47] One could claim, that because local utilization is usually not made visible by contrivances, immemorial use (45 - 50 years) is required to establish prescription. Therefore only local sites that have been in use since the 30's are protected by prescription. However, the idea of protection of the proprietor created by the visibility-theory does not seem to be needed to the same extent in the Greenland case, where the proprietor is the Danish state.

[48] See Illum, supra, pg. 467f with references.

[49] Commercial hunting and fishing requires a license and residence in Greenland.

[50] This right has to be seen as running parallel to more general rights. Although this right may have existed in the past, it might well have disappeared again by desvetudo.

[51] In "Samfundsforskning i Groenland, 1. Delrapport" pg. 59f is an attempt to introduce customary rights into this field. The results of this would be totally out of proportion. Anyhow, the article is presumably based on a misunderstanding of legal terminology and structure, as the author is not of a legal background.

current legal practice[52] and theory in general[53] .

8.3.6. Expropriation

Weighing up the economic benefits of the fishing and hunting as against the mining industry is also a matter of proportion. Often mining activities at a fiord will be considerably more lucrative than the hunting activities in the same fiord[54].

According to the Danish Constitution, it is possible to make expropriation against full compensation for losses[55]. The loss is the damages, when they are minimized as much as possible. If the prescriptive right of use for the hunters is recognized, it is also possible to expropriate it by law. This way, all possible problems with claims for damages are sorted out before they occur. And the hunters can then afterwards pursue their activities in whatever way possible while respecting the rights of the mining companies.

According to the Act for Greenland on Expropriation[56], the Minister for Greenland is entitled to initiate expropriations of private property, e.g. buildings, contrivances and limited rights of use, for the purpose of mineral exploration and exploitation conducted by

---

[52] However, in a case referred to in Hertz (1977): "En oekologisk undersoegelse af minedriftens virkninger for fangerne i Uvkusigssat", between the Greenex mining company and the hunters of Umanak commune, the mining company in 1976 agreed to pay DKK 250.000, half of what the hunters asked for, as compensation for damages caused by vessels breaking up the ice in the fjords and thereby disturbing the seal catching.

[53] Such a theory can only be adapted after much consideration, because it is clearly inconsistent with the current theory, according to which prescription cannot be claimed for rights provided for by law. Only a strictly limited number of persons who have prescriptive rights ought to be able to advance claims for damages, which could not be minimized or eliminated by catching or fishing some where else. If a broader right was to be accepted, the oil companies, such as those operating in the North Sea, would probably be faced with a considerable number of suits from dissatisfied fishermen.

[54] One also has to bear in mind that vessels breaking up the ice in a fjord only make it difficult to catch the seals. Another effect might well be an increase in the seal population, partly because the catching decreases, and partly because their living conditions improve in the way that it will be easier for them to breath during the winters, when vessels break up the ice.

[55] Art. 73 of the Constitution. See Ross (1966): "Dansk Statsforfatningsret", chapter 35, Soerensen (1973): "Statsforfatningsret", chapter 22, and Germer (1989): "Statsforfatningsret II", pp. 115-118.

[56] Act no. 182 of May 26th 1972.

concessionaires, as well as for numerous other purposes[57].

Also rights according to a concession might be subject to expropriation. This is generally accepted in jurisprudence[58].

8.3.7. Administrative regulations

In accordance with Act no. 612 of December 23rd 1980, the Greenland Home Rule authorities provide regulations concerning land use and planning, as well as regulations concerning construction work[59].

The delegation to the Greenlandic authorities of the power to decide on land regulative matters, according to art. 2 of the Act, does not affect the right of the Danish authorities to give prospecting licences, exploration and exploitation concessions to mining companies in accordance with the Mineral Resources Act. In other words, lawful rights given by concession will always be superior to land regulations of the Greenlandic authorities. Art. 2, par. 3, does however state, that the needs of the mining companies for land outside the concession area, for instance for the establishment of ports or roads, have to be regulated in accordance with provisions laid down by the Home Rule authorities.

As regards environmental matters, the Act for Greenland concerning Environmental Matters[60] lays down that the Home Rule authorities have the competence to issue rules on environmental matters; however, environmental issues in relation to the exploitation of non-living resources are to be decided upon according to the law applying to such activities, i.e. the concessions and the Mineral Resources Act.

8.4. TAXATION

---

[57] An example of procedure and valuation in connection with expropriation of buildings for road purposes can be found reported in 111 UfR 1057 (1977), Oles Varehus A/S vs. Ministry for Greenland.

[58] Cf. Foighel, Isi (1963): "Nationalization and Compensation" Stevens & Sons Ltd., London (1963), chapter 15, as well as chapter 11 below.

[59] According to Greenland Assembly Act no. 1 of February 2nd 1981, permission from the commune councils is required to use land for erection of buildings, establishment of roads etc.

[60] Act no. 850 of December 21st, 1988.

The present Greenlandic Taxation Act entered into force in 1980[61]. Taxation is based on a Pay–As–You–Earn system and is administered by the communes. Taxation of incomes of persons living outside the communes, however, is administered by the Danish Inland Revenue Department.

In each commune there is an assessment committee, appointed by the commune council for a period of four years. For all of Greenland there is a taxation board, which issues directives to the committees. Assessments made by the local committees can be appealed to the taxation board, and its decisions can in turn be appealed to the Greenlandic High Court as first court instance.

The tax on personal income is 23 percent at present. For limited companies there are more complicated rules, and for mining companies special arrangements can be made[62].

Normal limited companies with domicile in Copenhagen are not exempted from Danish taxation of income deriving from Greenland[63].

8.5. BUSINESS LICENSING

There is a requirement of a minimum of six months previous residence in Greenland before one can obtain a license to conduct trade or other business in Greenland; besides this, there is a number of rules identical with Danish legislation[64]. Commercial hunting and fishing can only be pursued by persons who have been residents for a minimum period

---

[61] Greenland Assembly Act no. 5 of May 19th 1979.

[62] Company taxation is a rather complicated field. For instance, the questions of where, when and how much to pay, depend on the nature of the company, and where it has its domicile. This also applies to mining companies, to whom the Mineral Resources Administration may have provided particular, individual arrangements in the concessions, as described in chapter 7.5.5.

[63] See the case reported in 99 UfR 642 (1965), Christiani & Nielsen A/S v. Finansministeriet.

[64] Acts no. 397 of December 2nd 1966 and 624 of December 15th 1975, cf. Act no. 185 of March 25th 1988.

of two years[65]. As regards companies, and also the hotel business, there is a particularly strict legislation. All merchants must keep books in accordance with Danish law[66].

8.6. COMPANY LAW

The Danish laws on limited stock companies[67] and on limited private companies[68] are in force in Greenland with a couple of minor changes[69]. Greenlandic limited companies are registered in the register of the Danish Commerce and Companies Agency in Copenhagen, as well as in the register of the Chief Constable in Greenland. Companies can obtain business licenses, if the manager and the majority of the board of directors fulfil the normal conditions. There are special rules concerning company taxation, but, as mentioned above, mining companies obtain special agreements.

8.7. THE AUTHORITIES OF LAW

All official authorities in the legal sphere are state authorities under Danish ministries.

The police force in Greenland is under the Danish Chief of Police and the Ministry of Justice. Greenland is regarded as one police district, headed by the Chief Constable in Godthaab. Police stations are established in Nanortalik, Julianehaab, Narssak, Frederikshaab, Godthaab, Sukkertoppen, Holsteinsborg, Egedesminde, Christianshaab, Jakobshavn, Godhavn, Umanak and Upernavik. These towns are located at the west coast, and at the east coast there are police stations in Angmagssalik and Scoresbysund. In Thule the Chief of trade has police authority, and the Danish sledge patrol force "Sirius" has police

---

[65] Greenland Assembly Act no. 4 of October 13th 1980.

[66] Act no. 178 of June 5th 1959, as by Act no. 60 of February 19th 1986.

[67] Act no. 433 of July 18th 1988.

[68] Act no. 434 of July 18th 1988.

[69] According to Act no. 437 of August 30th 1974, cf. Act no 30 of January 20th 1987.

authority in North and East Greenland, where it patrols to ascertain Danish sovereignty. Furthermore there are Danish police constables at the air bases in Sondre Stroemfjord and Thule.

In the rural settlements there are commune bailiffs, who assist the police in the exercise of local police authority, conduct legal services and also notify the county judges of births, deaths etc.

The organization of the courts in Greenland is laid down in an Act on Administration of Justice in Greenland[70]. The courts are the Greenland High Court and 18 county courts. The High Court functions as a court of appeal for the judgements of the county courts; in certain cases, however, it functions as a court of first instance.

The judges of the county courts are laymen, whilst the High Court comprises one judge and two deputy judges, with Danish lawschool degrees[71].

The hearing of the cases is normally in the county courts as court of first instance. However, a party in any kind of county court case may request that the case be referred to the High Court of Greenland as first instance[72]. The High Court decision to grant the request depends on whether legal or other special knowledge is considered of particular importance in the decision of the case. Furthermore the High Court is first instance in cases concerning persons or events at the air bases and in uninhabited parts of Greenland[73]; it is also first instance in certain kinds of cases, for instance concerning illegal fishing, expropriation and bankruptcy.

A judgement made by the High Court of Greenland as first instance can be appealed to the Eastern division of the High Court in Denmark as second instance, and exceptionally the Minister of Justice can grant a third instance hearing before the Supreme Court of

---

[70] Act no. 376 of August 19th 1980, revised by Act no. 684 of December 21st 1982, hereinafter called AJG.

[71] Concerning the functions of the courts, comprehensive information can be found in Bentzon (1978): "Ret og Reformer i Groenland" 14 TfGR 33 (1978).

[72] According to AJG, chapter 1, art. 15.

[73] It is possible to have these cases referred to either county courts or Danish courts, according to AJG, chapter 1, art. 13, and chapter 3, art. 1.

Denmark.

Cases which commenced in the Greenlandic county courts as first instance can be appealed to the High Court of Greenland, and exceptionally a third instance hearing is possible before the Danish Supreme Court[74].

It is very unlikely that cases in connection with mineral exploitation will occur before the county courts. Rather, they would tend to be brought to Danish courts at first instance, either because they concern uninhabited parts of Greenland, are legally complicated, or because it simply is more convenient[75]. It is likely, however, that cases involving personal matters of the staffs of the mining industries can be heard in the county courts.

The concession arrangements are subject to arbitration. If a third party brings a legal issue concerning exploitation before the county courts, these are likely to refer the matter to the Greenlandic High Court.

Due to the three–division of powers provided in the Constitution, the court procedures are out of the reach of the administrative Home Rule authorities.

---

[74] AJG, chapter 6, articles 12 and 13.

[75] The case may be referred to Danish courts by the Greenlandic courts, or the parties may agree upon this, either at the point of time when the case occurs, or it may be provided for in the concession contract. It also can be required by law, for instance if both parties have domicile in Denmark. The subjection of these types of cases to Danish courts may also be seen as a result of the limits of human resources in Greenland.

9. THE MINERAL RESOURCES ACT[1]

9.1. INTRODUCTION

The Mineral Resources Act of 1991 succeded an Act from 1978. The 1978 Act succeeded the 1965 Mineral Resources Act. The two acts were almost identical, apart from the changes in administrative competencies required by the introduction of home rule in Greenland. The main scope of the new Act was to establish a recognition of the Home Rule authorities in the field of mineral resources. The changes in administration did not affect the concessionaires significantly; instead of dealing with the ministry, they from 1978 on had to deal with the Mineral Resources Adminstration (MRA), which in practice made no difference. The differences between the two acts were mostly linguistic, caused by the administrative change, however, there were a couple of minor changes of some importance.

The applicability and the adequacy of the regime of the 1965 Act, which primarily focussed on mining, was discussed in 1974, when the Minister invited to the submission of applications for offshore blocks for oil exploration according to a model concession. This oil experience is touched upon in chapter 10.4 below. The committee which prepared the model concession also discussed the legislative regime, and in particular the committee discussed the adequacy of the three level granting procedure instituted by the Act; Prospecting licence, exploration concession and exploitation concession[2]. The committee pointed out that in return for high exploration investments the concessionaires would require certainty for high economic return via the exploitation concessions. The committee found that it was possible to link the exploration obligations and the exploitation rights within the same concession and also within the wide legislative framework of the 1965 Act. In this connection it was stressed that the global development of concessional regimes in

---

[1] Act no. 335 of June 6th 1991, which succeded Act no. 585 of November 29th 1978, which entered into force by Act no. 166 of April 25th 1979. This Act was amended in 1988 by Act no. 844 of December 21st 1988. An English extract of the 1965 Act as amended by Act no. 397 of July 16th 1969 can be found in Durante & Rodino (1983): "Western Europe and the development of the Law of the Sea", vol. I, section Denmark, pg. 65ff. (Oceana, New York 1983).

[2] See Udvalget vedroerende tilladelser og Koncessioner (1974): "Rapport til Ministeren", Ministeriet for Groenland, Copenhagen 1974, pg. 12 ff.

favour of the host countries did not effect the Greenland case directly, because the presence of hydrocarbons was uncertain[3].

Accordingly, the concessional regime itself was not at stake in connection with the adoption of the 1978 Act.

The 1978 Act was divided into six chapters, of which the first comprised general provisions, particularly concerning the administration. The second concerned prospecting licenses, the third exploration concessions, and the fourth chapter exploitation concessions. The fifth chapter contained one article concerned with the allocation of public revenue, and the sixth chapter consisted of various general provisions concerning matters in connection with the concessions[4].

The 1991 Act is expanded to 11 chapters with a total of 34 articles. The first chapter is almost identical to the first chapter of the 1978 Act. The second chapter contains one article relating to prospecting licenses. The third chapter includes general requirements relating to the issuance of exploration and exploitation concessions. Chapter four contains special rules applying to exploration for and exploitation of hydrocarbons. Similarly, chapter five contains rules applying in relation to minerals other than hydrocarbons. The sixt chapter regulates the utilization of hydro power. The termination of prospecting, exploration and exploitation activities is ruled by chapter seven. Chapter eight contains one article concerning scientific research. Chapter nine deals with the distribution of the public revenue. Chapter ten comprises a number of requirements to the conduct of the authorities and the enterprises. The elleventh chapter consists of various general provisions concerning different matters in connection with the concessions.

The administrative issues are described in chapter 7.3. above concerning administrative competencies in Greenland, and they will not be discussed any further in this chapter[5], as they are without major practical and legal interest to the concessionaire. This chapter aims

---

[3] Ibid. pg. 19.

[4] The 1988 amendment of the Act supplemented the Act with a chapter 4A on hydro power activities.

[5] One may find extensive discussions of the socio-politico aspects of public supervision of exploitation activities in Greenland in J.D. Davis et al (1985): "Offentlig styring af olie-gasaktiviteter i Groenland", Statens Samfundsvidenskabelige Forskningsraad, Danmark (1985) 368 pg.

to give an overview of the rights and obligations of the concessionaire according to the Mineral Resources Act.

9.2. REQUIREMENTS OF THE PRIVATE PARTY

There are no requirements or preconditions as regards the private party, who wishes to obtain a prospecting licence. Over time both foreign registered and Danish companies as well as private persons have held licenses.

To obtain an exploration concession the applicant earlier had to be judged to have the necessary financial capacity and technical knowledge, according to art. 11, par. 1, of the 1978 Act.

Now there are no formal requirements to applicants for licenses and exploration concessions. In relation to exploitation concessions, art. 7, par. 3, of the 1991 Act provides that such concessions as a main rule may only be granted to limited stock companies with registered domicile in Greenland. Earlier, exploitation concession as a general rule were only granted to limited stock companies[6], registered in the Kingdom of Denmark[7].

According to art. 7, par. 3, the potential concessionaire must possess the necessary financial capacity and technical knowledge in relation to the exploitation in question.

9.3. IMMEDIATE RIGHTS OF THE PRIVATE PARTY

Article 6 provides, that a prospecting licence is nothing more than a non-exclusive permission to conduct geological surveys for mineral resources.

In contrast to the licenses, the concessions for exploration or exploitation are exclusive rights, and they can only be granted as sole and exclusive rights[8].

As a continuation of his efforts, the holder of an exploration concession now has a

---

[6] The so-called "Aktieselskab", established in accordance with Act no. 433 of July 18th 1988.

[7] A Danish subsidiary company of a foreign company was sufficient. Now the subsidiary company must have domicile in Greenland.

[8] According to art. 7, par. 1, of the 1991 Act, cf. articles 2, 11 and 18 of the 1978 Act.

right to obtain an exploitation concession, according to art. 11, par. 2, and art. 15, par. 2. Until 1991, the holder only had a preferential position to obtain an exploitation concession, if he fulfilled the requirements, and if no particular circumstances made it reasonable to grant the concession to someone else.

Within the concession area the concessionaire previously could use without further permission the required space for the erection of buildings, work sites, machinery, ports, roads, rail etc. The concessionaire was also entitled to change the structure of the terrain as necessary to the activities and to close off areas in use[9]. Now all construction work must be approved of before exploitation is initiated, according to articles 10 and 25.

9.4. PRACTICAL MATTERS

9.4.1. Which areas of Greenland?

Licenses and concessions can be granted everywhere in Greenland, including the continental shelf. The 1965 Act and the 1978 Act explicitly provided that the concessions had to be granted with due regard for the environment and the preservation of buildings. This means that the preservation of biological, historical or landscape reasons had to be considered. Furthermore the concessions had to be granted with due regard for existing rights of use. Presumably, these rights were not rights of use provided for by law[10], but were the limited prescriptive rights concerning hunting, fishing and local natural resources utilization discussed in chapters 8.3.5.3. and 8.3.5.4.

It was not impossible to let the concession area include existing settlements, as art. 6 of the 1978 Act had the same formulation as art. 3 of the 1965 Act, in which art. 13, par. 3, provided power to expropriate such settlements[11].

Now local utilization of mineral resources has to be with respect of the rights of

---

[9] However, existing plans for construction work had to be approved by the authorities before starting the exploitation.

[10] Obviously the laws have to be respected. The English translation in Durante & Rodino (1983) op.cit., uses the terms "ususfructuary and similar rights" in this place.

[11] See chapter 8.3.6. in fine.

concessionaires, according to art. 32 of the 1991 Act. Other local habitual rights are not mentioned in the Act.

9.4.2. Time limits

A prospecting licence can be granted for a period of up to five years at the time, pursuant to art. 6. As laid down in articles 11 and 15, exploration concessions have a duration of ten years, with the possibility of prolongation for two years at the time up to a maximum of 16 years. Exploitation concessions are granted for a period of 30 years, cf. art. 11, par. 2, and art 15, par. 2, with the possibility of prolongation up to a maximum of 50 years, pursuant to art. 7, par. 4.

9.4.3. Work methods

9.4.3.1. Plans.

Previously, the MRA could require all applicants to licenses or concessions to submit work plans along with their application, according to art. 6, par. 2, of the 1978 Act. This provision is not repeated in the 1991 Act, but according to art. 25, par. 3, the authorities may require all necessary information.

However, pursuant to articles 10 and 25, plans for exploitation and construction in connection with exploitation have to be approved by the Ministry before work can begin. Necessary permits from other relevant authorities also have to be obtained according to art. 26.

9.4.3.2. Technical standard.

Until 1991, art. 22, par. 2 and 3, of the 1978 Act provided, that if the MRA did not find the mining to be in order or appropriate, it could recommend changes in the running of the mine, and demand submission of future plans. If the running of the mine presented danger to persons or third party property, the MRA could demand suspension of the work.

Now art. 23 prescribes that the work shall be carried out in accordance with acknowledged practice under similar circumstances. The activities shall be carried out in an expedient manner with respect to security and environmental safety, as well as with respect to utilization of the discovered resources.

9.4.3.3. Closure.

Chapter 7 of the 1991 Act emphazises on the closure of the exploitation activities. Pursuant to art. 18, any concession shall include requirements concerning the removal of installations and the un-doing of environmental deteriorations. The Ministry may demand financial securities for the fulfilment of such obligations, and the Ministry may issue orders concerning clean-up in the concession area.

Together with applications for exploitation and expansion, the concessionaire must submit plans for the future closure of the activity. The Ministry must approve of this plan before any exploitation may take place.

Similar requirements are laid down in art. 20 with respect to suspension of activities, whereby the Ministry may ascertain the maintenance of the installations and the possibilities of fulfilment of future plans of permanent closure of the activities.

9.5. ECONOMIC ISSUES

9.5.1. Guarantees

According to art. 6, par. 3 - 4, and art. 7, par. 6, of the 1991 Act, the Minister as a precondition for granting a prospecting licence or an exploration concession may require the payment of a fee and he may also lay down other conditions. Previously, only an adequate guarantee could be required for the purpose of covering possible public expenditures in connection with the activities, including possible expenditures on rescue operations[12].

9.5.2. Rewards

Pursuant to art. 13, par. 2, cf. art. 21, of the 1978 Act, it could be provided in the concession, that the concessionaire should pay a reward to persons making the first find, or those who first draw attention to the presence of valuable resources. A similar provision is not included in the 1991 Act.

---

[12] Pursuant to articles 9 and 12 of the 1978 Act. In the previous 1965 Act a guarantee only could be required, if the permission included rights to conduct major blasts and drillings in accordance with art. 5 of the 1965 Act, similar to the present art. 8.

9.5.3. Fees

According to art. 11, par. 2, of the 1978 Act, an exploration concession, and under particular circumstances an exploitation concession[13], could provide for the concessionaire to pay a concession fee to the authorities. Mow, art. 8, par. 1, 1. sentence, provides that a conecssion shall rules concerning such fees. It may be determined that the concessionaire shall pay an annual area lease fee, calculated on basis of the size of the area comprised by the concession.

9.5.4. Royalties

As no exploitation takes place under prospecting licenses and exploration concessions, it is only under exploitation concessions, that payment of royalties is in question.

Art. 8, par. 1, of the 1991 Act provide that the concessions can include conditions concerning the payment of a fee calculated on basis of the extracted minerals (royalty) or conditions concerning the payment of a share of the economic outcome of the activities comprised by the concession.

The 1978 Act included a much more ambiguous rule in art. 20, which stated that "when circumstances demand it, public economic interest can be secured by provision of concession fee or otherwise. Under this, it can be decided that a payment from the concessionaire shall be paid even if the invested capital with addition of an adequate amount of money as interest, has not yet been recovered through the running of the mining"[14]. This rule does not exist any more.

9.5.5. Tax and duty

In connection with the above mentioned provisions concerning the royalties to be paid by the concessionaire, in art. 8, par. 3, it is provided that in connection with the fixing of the royalties, it can be decided, that the concessionaire's incomes deriving from the mining

---

[13] According to a rather ambiguous rule in art. 20, par. 2. See chapter 9.5.4.

[14] A similar provision was put into art. 17, par. 2, of the 1965 Act by Act no. 397 of July 16th 1969. The provision seems very ambiguous and even arbitrary in its conditions and consequences. But this provision only entitles the MRA under particular circumstances, and as an exception from the main rule in par. 1, to include clauses on these special fees or royalties in the concession contract itself. However, the MRA could not require these special payments subsequent to the issuance of the concession.

industry shall be exempt from tax. It can also be provided that machinery and other materials imported into Greenland, to be used in connection with the mining, shall be free of duty and other imposts.

9.5.6. Public participation

The Mineral Resources Act of 1978 did not include regulation of the possibilities of public participation in concession ventures, but public participation was recognized as an implicit possibility under the 1965 Act, and it still was after the issuance of the 1978 Act.

The committee which planned the 1974 offshore concessions considered the possibilities of public participation in detail[15]. Against the background of the changes in Norwegian concessions over the period 1965 – 1974, the committee recommended a right to public participation up to 50% on the basis of the "carried interest" principle. It was envisaged that public participation would be demanded when the income exceeded the costs and that the public participation would be through a public owned limited company.

The right to demand public participation was retained in one article (art. 63) included in the concession documents of the 1974 offshore round. In the Jameson Land Concession 10 years later, the public participation with carried interest was more extensively specified, and the public company was established by a special Act adopted by the Danish Parliament[16]. The 1984 Parliament procedures did not cause the insertion into the Mineral Resources Act of articles concerning public participation.

In art. 8, par. 2, of the 1991 Act, it is provided that a concession may arrange for the conditions of subsequent participation in a concession venture by a company controlled by the State and the Home Rule Authorities.

9.6. RELATIONS TO THIRD PARTIES

9.6.1. Other licensees

---

[15] See Udvalget vedroerende tilladelser og Koncessioner (1974): "Rapport til Ministeren", Ministeriet for Groenland, Copenhagen 1974, pg. 53 ff.

[16] Act no. 595 of December 12th 1984.

The granting of a prospecting licence does not preclude the possibility that a similar licence can be granted to others, according to art. 6, par. 2. The licence may be for prospecting the same minerals in the same area, and it has already occurred, that licenses have partly overlapped in this way.

Unlike the licenses, the concessions can only be granted as sole and exclusive, as mentioned in chapter 9.3. above. Until 1991, it was probably not possible to exclude certain minerals from the concession, and then possibly grant an exploration concession to someone else concerning these particular minerals. This would be inconsistent with the formulation of articles 11, par. 1, and 13, par. 3, of the 1978 Act. Now the concessions can be limited to specific mineral according to art. 7, par. 1.

As regards the exploitation concessions art. 15, par. 2, prescribes the limitation of the concessions to certain particular commercially exploitable deposits of minerals in a defined area.

9.6.2. Geological surveys

Regardless of granted concessions the Home Rule authorities and the State authorities, including the Greenland Geological Survey, a public institution, are always entitled to conduct systematic scientific surveys and practical research, pursuant to art. 1, par. 2.

Pursuant to art. 21 other persons can also be granted a right to conduct scientific geological research, when this is not for the purpose of exploitation. A permit is required if the research is carried out with the purpose of future exploitation.

Until 1991, it was an explicit condition that the research carried out by the Greenland Geological Survey and others could take place only if it did not cause inconvenience to the concessionaires.

9.6.3. Succession

As a licence is a non-exclusive permission only, without exploitation rights, it does not have much economic worth. In practice therefore succession is not an important question as far as licenses are concerned.

Pursuant to art. 27 direct or indirect transfer of a concession requires the approval of the Minister of Energy in accordance with the rules laid down in art. 3. This states quite

clearly that succession[17] is not possible unless the authorities agree. The indirect transfer probably refers to sale of the stock in a mining company, or letting the concessionaire become a proforma concessionaire only, while the mining is conducted by someone else[18].

According to art. 27, par. 2, the concession can not be the object of execution nor can it be attached by creditors. Therefore no Danish courts can conduct any execution, as it is illegal. This does not, of course, prevent foreign authorities from participating in such actions, but it would probably result in termination of the concession, as described in chapter 9.8.

9.6.4. Property registration

As a protection for the concessionaire and his lenders against third parties, it was provided in art. 29 of the 1978 Act, that registration concerning the property of a concessionaire in Greenland should take place before the Court of Copenhagen[19]. Now the concessionaires as a main rule have to be limited stock companies with domicile in Greenland[20], and therefore any rights have to be registered with the High Court in Greenland.

9.6.5. Local use of the concession area

Until 1991, the concessions had to be granted in a way which respected existing rights of use[21]. However, as long as a prescriptive right of use is not claimed or registered, the granting of a concession will not be contrary to such use, as it is then public use according

---

[17] Transfer as an act of volition. Legally, inheritance is not comprised, but this presumably is of no practical importance here.

[18] The indirect transfer is an individual question in each case, and has to be a matter of negotiation. It is impossible to set up general guidelines for the drawing of a border line between indirect transfers and no transfers.

[19] The provision is identical to art. 27 of the 1965 Act. Whether mortgage also had to be registered in Greenland was an open question. See chapter 8.2.

[20] According to art. 7, par. 3.

[21] According to art. 6, par. 1, of the 1978 Act.

to legislation only[22]. One could suggest that when a concession has been granted, any encroachments of previous rights of use, become the responsibility of the MRA, and not the concessionaire.

The 1991 Act does not regulate the relations to the local use of the concession area. However, art. 31 provides that the concessionaire is liable to pay compensation for any damages caused by the activities.

Possibly, one may claim that if potential prescriptive rights later cause limitations on the activities of the concessionaire, which is legally unlikely, the MRA might be liable to pay compensation for damages to the concessionaire.

According to art. 32, par. 2, the concessionaire has a preferential right to exploit raw materials, compared with the habitual rights of the population. It was by the 1978 Act that the rights of the concessionaire became stronger than the rights of the population[23].

9.7. ACCESSORY DUTIES

9.7.1. Information

Prior to 1991, the holder of a prospecting licence should within six months after the expiry of the licence or the cessation of work submit an explanation of the geological and geophysical research, that has been conducted, as well as a report of the minerals discovered.

Concessionaires should prior to July 1st every year submit a report on the research conducted and the discoveries made. Furthermore, the concessionaire should submit samples of soil, rock and minerals, if the MRA so required.

Now, according to art. 25, par. 4, the holders of licenses and concessions shall submit reports about their conduct regularly.

9.7.2. Supervision

---

[22] See chapters 8.5.3. and 9.4.1. As long as prescriptive rights are not claimed, possible rights do not have the legal impacts of prescriptive rights. In this case they only are exercised as ordinary public rights.

[23] See chapter 8.3.5.3.

Pursuant to art. 25, par. 3, the Ministry superintend the work of prospectors and concessionaires. The supervision has the right to inspect all parts of the enterprises and to require all necessary information.

9.7.3. Personnel

In a concession pursuant to art. 9 it is to be laid down the extent to which local or Danish labour must be employed. However, if necessary the concessionaire may in all cases hire foreign labour, if equally qualified labour is not available in Greenland or Denmark.

9.8. TERMINATION

9.8.1. Exploration concessions

Until 1991, the 1978 Act provided that an exploration concession was forfeited, if exploration was not conducted for a period of three years, or if the concessionaire went into liquidation or ended in bankruptcy. It was also forfeited if any of the conditions laid down in the Mineral Resources Act, the concession or other connected agreements were not fulfilled.

Now the rules concerning termination of exploration concessions are the same as those applying to exploitation concessions.

9.8.2. Exploitation concessions

Pursuant to art. 8, all concessions and licenses must include specific rules concerning the circumstances leading to forfeiture or revocation of the concession in question. The Act of 1991 does not indicate these circumstances, but according to the 1978 Act, an exploitation concession was forfeited if the mining had not been running for a period of two calendar years. The same was the case, if any of the conditions laid down in the Mineral Resources Act, the concession or connected agreements had not been observed, as well as if time limits had been overrun.

According to chapter 7 of the 1991 Act, it has to be decided at the time of granting an exploitation concession, what is to be done with the constructions used for the exploitation in the event of expiry, relinquishment or forfeiture of the concession.

10. OFFSHORE EXPLOITATION ACTIVITIES

With the development of modern technology, drilling and mining in the sea-bed has become just as interesting as operations on land. As the largest island on Earth, Greenland is surrounded by immense expanses of water and subjacent sea-bed. Despite the inclement climatic conditions, the mining industries are expanding and will continue to expand to the waters of the North. This chapter aims at treating the particular legal problems concerning the sea areas and the exploitation of non-living resources from the sea area.

10.1. APPLICABLE EXPLOITATION ACTS

10.1.1. On the continental shelf

In 1971 an Act on the Continental Shelf[1] was adopted, regulating the exploitation of natural resources from the Danish, including the Greenlandic, continental shelf. As mentioned at the beginning of chapter five, the continental shelf has an inner limit towards the coast, as art. 1 of the Convention on the Continental Shelf and art. 2 of the Act on Danish Sovereignty of the Continental Shelf[2] lays down that the term "continental shelf" is used to refer to the sea-bed and the subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea. In pursuance of this definition of the continental shelf the act of 1971 regulating the exploitation of the continental shelf, does not lay down any provisions concerning the exploitation of natural resources of the sea-bed and subsoil of the territorial sea.

10.1.1.1. Which natural resources.

Art. 1, par. 2 of the 1971 Continental Shelf Act lays down that it regulates all exploration and utilization of natural resources of the sea-bed and its subsoil, both mineral and other non-living resources, as well as living organisms in constant physical contact with the sea-bed. Regarding raw materials then it covers both stone and gravel, as well as

---

[1] Act no. 259 of June 9th 1971, as by Act no. 182 of May 1st 1979.

[2] Act no. 259 of June 7th 1963.

hydrocarbons and valuable minerals.

10.1.1.2. Competencies.

In art. 1, par. 1 it is laid down that exploration and utilization of natural resources may take place only under a concession or a licence. According to art. 6, par. 2, the Minister for Greenland (the Minister of Energy) shall exercise the administrative powers specified in articles 2 and 4 of the act[3] in compliance with the regulations laid down in the Greenlandic Mineral Resources Act[4].

This means that the administrative apparatus and procedures as regards exploitation on the continental shelf shall be in pursuance of the rules laid down in the Greenlandic Mineral Resources Act. Of particular importance is chapter 1 of this act, according to which all exploitation activities shall be with the consent of the Home Rule authorities[5].

10.1.1.3. Ownership of the natural resources.

The first sentence of the first article of the Continental Shelf Act lays down that "the natural resources of the Danish continental shelf belong to the Danish state". As the Continental Shelf Act explicitly applies to Greenland, it follows that the natural resources of the Greenlandic part of the Danish continental shelf belong to the Danish state. This can also be deduced from the Convention, as the rights of natural resources of continental

---

[3] Art. 2 refers to legislation in force only in South Denmark. Therefore the division of powers laid down in these acts does not apply in Greenland. Furthermore, this division of powers is of no interest, since the powers with regard to Greenland are conferred on the Minister of Energy.

[4] Before the issuance of the Greenlandic Mineral Resources Act of 1991, which explicitly applies to the continental shelf, it has been argued that the Greenlandic Mineral Resources Act of 1978 did not apply; and instead that the 1965 Mineral Resources Act applied, since the Continental Shelf Act was adopted prior to the adoption of the 1978 Mineral Resources Act. See Sawicki (1981) pg. 9–11, however arriving at a different conclusion for political reasons.

[5] Art. 6 of the Continental Shelf Act only lays down that the exercise of powers must be in compliance with the rules of the Mineral Resources Act. Therefore the provisions of material character concerning mining did not apply prior to the issuance of the 1991 Mineral Resources Act.

shelves are conferred only on states[6].

This means that the Danish state has the basic rights to these raw materials. The Danish parliament has, however, by art. 6 of the Continental Shelf Act and by chapter 1 of the Mineral Resources Act decided that the exploitation may only take place with the consent of the Greenlandic Home Rule authorities[7].

10.1.1.4. Specific safety measure provisions.

The Continental Shelf Act lays down certain provisions concerning the practical establishment of offshore exploitation. According to art. 4, cf. art. 6, the Minister of Energy may prescribe special regulations concerning safety measures in connection with the setting up and the operation of offshore installations, including the laying of pipelines and cables, and the taking of measures to prevent or remedy pollution.

The minister may also prescribe regulations concerning the establishment of safety zones surrounding installations used for exploration or exploitation. In accordance with the Convention, the maximum extent of such zones shall be 500 meters round the installations, measured from any point of its outer edge. The minister may prescribe rules concerning sailing in safety zones and, in that connection, may prohibit access to them by unauthorized ships.

10.1.1.5. Enforcement.

According to art. 5 of the Continental Shelf Act, violations of the exclusive right of the state under article 1, shall be punishable by a fine or term of simple detention not exceeding six months, unless a higher penalty is applicable under another act.

Similarly, any failure to comply with the conditions governing a concession or licence

---

[6] For instance the Supreme Court of Canada has stated that "continental shelf rights are in pith and substance incidents of external sovereignty". This was in 1984 in the Newfoundland continental shelf dispute between the Newfoundland province and the federal authorities of Canada, see Gilmore (1984): "The Newfoundland continental shelf dispute in the Supreme Court of Canada" 8 Mar.Pol. 323 (1984).

[7] From a political standpoint, it might be a legislative error that the Danish state after the introduction of Home Rule is still legally and solely entitled to the natural resources of the Greenlandic part of the continental shelf. But it is doubtful whether the Danish parliament within the regime of the Convention and international public law has the authority to transfer possible basic rights to a group of inhabitants of the state.

granted in pursuance of the Continental Shelf Act and the Mineral Resources Act, shall be punishable by a fine, unless higher penalty is applicable under another act.

Rules issued in accordance with the Continental Shelf Act may provide for a penalty of a fine for any violation of such rules.

In the case of offenses committed by stock companies, co– operative societies or the like, the company or society as such can be imposed a fine.

10.1.2. In territorial waters

In the inlets and fjords, and in a three nautical miles wide belt measured from the coastal base line, the Continental Shelf Act does not apply.

The Mineral Resources Act deals with the exploitation of mineral raw materials in Greenland. Nowhere in the act are minerals of the territorial waters explicitly mentioned; furthermore, the act contains no provisions on the conduct of off–shore exploitation.

A further interesting question is whether the territorial waters are Danish or Greenlandic. Well, of course they are basically a part of the territorial waters of the Kingdom of Denmark. In the south Danish territorial waters, the exploitation activities are governed by two acts; the Act on Raw Materials[8] and the Act on Utilization of the Subsoil of Denmark[9]. But both of these two acts do not apply explicitly to Greenland[10].

In the Act on Delimitation of the Territorial Sea of Greenland[11] the terminology "territorial sea of Greenland" is used, and art. 1, par. 1, states, that "the territorial waters of Greenland shall consist of the internal waters and the territorial sea". This implies that the coastal waters of Greenland according to Danish law are related to the territory of Greenland. It would also be linguistically illogical, if the territorial waters did not belong to the territory. The territorial waters of Greenland must be regarded as a part of Greenland, which for its part is part of the Kingdom of Denmark. As acts are given for

---

[8] Act no. 617 of September 24th 1987 as amended by Act no. 108 of March 3rd 1988.

[9] Act no. 293 of June 10th 1981.

[10] The terminology of the acts is "for" and not "in" Greenland.

[11] Act no. 191 of May 27th 1963.

Greenland, or for application in Greenland, they thereby also apply in the territorial waters surrounding Greenland. Therefore the Mineral Resources Act applies directly to the territorial waters.

Thus, another problem is that the Mineral Resources Act contains no provisions which specifically concern offshore exploitation. The minister does not have the same legal powers to issue rules on safety zones, and to enforce the law by penalties, as on the continental shelf. This is, however, more likely to be a theoretical, than a practical problem, since the problem is easily solved by supplementary legislation.

10.2. LEGISLATION APPLYING TO OFFSHORE ACTIVITIES

Just above it was concluded that all Greenlandic acts apply within the territorial waters, unless the acts themselves explicitly states the opposite. But then remains the problem of determining which acts apply to offshore installations.

Pursuant to art. 3, par. 1, of the Continental Shelf Act, Danish law shall apply to installations which are to be used for exploration or exploitation of the continental shelf and are situated in the area of the shelf and in safety zones surrounding the installation. This means that installations and safety zones, but not the rest of the continental shelf, are legally treated as parts of the Danish realm, and Danish acts are automatically in force at the installations, unless the act explicitly states the opposite.

Then art. 6, par. 1, lays down, that "in case of installations and safety zones situated or established in the part of the continental shelf appertaining to Greenland, the law otherwise applicable to Greenland shall apply". This could entail a collision between Danish law applying according to art. 3, and laws applying only to Greenland. But the terms "the law otherwise applicable" probably mean that where specific Greenlandic acts are adopted, they also apply to the installations of the continental shelf, as the primary source of law. If a certain legal area is not regulated by acts applying in Greenland only, then Danish law automatically applies, as the secondary source of law. All this leads to the conclusion that acts applying exclusively to Greenland, also apply to the installations of the continental shelf off Greenland, and that acts, which according to their own content apply both in Greenland and in the rest of Denmark, also apply to the continental shelf installations, since they are at the same time both Danish and Greenlandic law. Further-

more, if special Greenlandic law does not exist in a given legal field, then Danish acts, which according to their own wording do not apply to Greenland, may apply to installations at the Greenlandic part of the continental shelf, as the term "apply to Greenland" mentioned above, only includes the land and the territorial waters, but not the continental shelf.

According to art. 3, par. 2, of the Continental Shelf Act, the Act concerning the Conduct of Economic Activities in Greenland[12], the Act on Hunting and Fresh Water Fishery in Greenland[13] and the Act on Commercial Trapping, Fishing and Hunting in Greenland[14] do not apply to installations and safety zones in the Greenland area[15].

A number of acts that would apply pursuant to the general references of articles 3 and 6, nevertheless do not apply in pursuance of their own content. Among these can be mentioned the Act on Control of Sand Drifting[16], which only applies on land. Unfortunately, the Greenlandic Criminal Act[17] by its wording is only limited to Greenland and territorial waters. This may mean that the Danish Penal Code applies as secondary source of law, but it seems more natural to state that the term "the law otherwise applicable to Greenland" in the Continental Shelf Act extends the jurisdiction of the Greenlandic Criminal Act. Other acts put into force by the general reference may seem absurd, but

---

[12] Act no. 277 of May 27th 1950, as amended by Act no. 182 of May 20th 1963.

[13] Act no. 72 of March 29th 1957.

[14] Act no. 413 of June 13th 1973. According to its art. 1, par. 1, it applies within 12 nautical miles from the coast. Outside the 12 nautical miles limit it would therefore not apply anyhow. By the provision of the Continental Shelf Act, it does not apply round installations situated in a distance of 3–12 nautical miles from the coastal line. The situation is then that there is free hunting and fishing round installations.

[15] Otherwise the acts would have applied through the general reference in art. 6, par. 1, of the Continental Shelf Act.

[16] Act no. 168 of April 28th 1982.

[17] Act no. 55 of March 5th 1954, as amended by Act no. 49 of February 13th 1979.

might come into prominence in the future: examples are the Act on Midwives[18] and the Act concerning Holidays and Great Church Festivals[19].

The general reference to Greenlandic and Danish law is not only a reference to legislation, but also to other parts of the legal system, as ordre public and Danish international private law. For instance, if a person perishes on a platform, the applicable law of inheritance is the law of his last domicile, even if his belongings are administered by a Greenlandic or Danish probate court.

In the last part of art. 3, par. 1, of the Continental Shelf Act is laid down, that in determining the area of jurisdiction of Danish courts and administrative authorities, installations and safety zones shall be deemed to belong to the area nearest to them, save as otherwise provided by the minister concerned. As regards the courts, the minister concerned is the Minister of Justice. One impact is that personal matters of the staffs of the platforms are under the jurisdiction of the Greenlandic local courts, unless the Minister of Justice decides otherwise. As regards administrative authorities, it is the Prime Minister, who lays down rules on jurisdiction. Concerning concessions, the parties, including the Minister of Energy, have the normal contractual freedom to choose venue, within the guidelines of the Mineral Resources Act.

10.3. THE LEGAL CHARACTER OF OFFSHORE EXPLOITATION EQUIPMENT

In the above sections, it was discussed how Danish and Greenlandic law apply to installations which are used for exploration or exploitation of the continental shelf appertaining to Greenland, as well as to safety zones surrounding these installations. However, the kind of installations to which Danish and Greenlandic law apply was not discussed. The Continental Shelf Act does not specifically define "installations". In the preparatory works of the Act[20] can be found an exemplification of the sorts of equipment,

---

[18] Act no. 671 of December 13th 1978.

[19] Act no. 279 of June 17th 1983.

[20] FT 1970/71, tillaeg A, col. 2425-2432.

that are included under the term "installations". The exemplification contains stationary production equipment, as well as moveable drilling ships and oil platforms; permanent mooring-bouys and breakwaters are also regarded as installations.

The definition of the legal character of the offshore exploitation equipment used, is not only of importance in the determination of the applicability of the Continental Shelf Act, but also when determining which Danish and Greenlandic Acts apply. If the equipment in question must be characterized as a ship, then Danish ship law applies, if the ship is registered in Denmark, and if the ship is registered in a foreign country, then the law of that foreign country applies.

The equipment in use in connection with offshore explorations and exploitations can be divided into three groups: stationary equipment, floating equipment for stationary use, and floating moveable equipment[21].

10.3.1. Stationary equipment

10.3.1.1. Characteristics.

Production installations, which include production-platforms and treatment-platforms, are usually stationary, since they rest upon the sea-bed, and since they are constructed at the place of production and are not supposed to be removed. The production installations are usually placed on steel- or concrete- constructions, so that the technical installations are situated above sea-level. Certain production installations resting on the sea-bed itself can, however, be found. Other stationary, non- floatable installations are, for instance, housing platforms and quay installations.

The Canadian company PanArctic Oils has developed a technique whereby natural ice floes are artificially thickened into ice- platforms, which carry the weight of conventional land drilling riggs. It is thought that the construction of such ice floes by the laying of freeze pipes in circular areas and by insulating them from the surrounding sea, would be a technically sound and economically advantageous solution, particularly in areas of permanent submarine permafrost. Since the ice based platforms in all respects function like

---

[21] This grouping is used by Christrup (1976): "Retlige problemer i forbindelse med efterforskning og indvinding af olie og gas paa den groenlandske kontinentalsokkel" 12 TfGR 65 (1976).

conventional platforms, they can be presumed to have the same legal status as other platforms on the continental shelf[22].

10.3.1.2. Installation or ship.

The expression "installation" in the Continental Shelf Act clearly comprises the stationary equipment. It is also very clear that the stationary equipment cannot in any way be considered a ship, since it cannot float and is not navigable[23]. Therefore all laws applying to traditional ships do not apply to these installations. American courts have also looked at the lack of use for carrying freight and the lack of purpose for use in navigation as transportation[24]. In American court practice, structures built to be permanently affixed to the sea bottom are uniformly not treated as vessels for admiralty purposes[25].

10.3.1.3. Registration and mortgage.

According to art. 29 in the 1978 Mineral Resources Act all official registration concerning activities of concessionaires in Greenland had to take place before the court of Copenhagen. Now concessionaires have to have their domicile in Greenland and thus register here, according to art. 7, par. 3, of the 1991 Mineral Resources Act. As mentioned in chapter 8.2., the Act for Greenland on Mortgage[26] concerns mortgage deeds in buildings and chattel. It seems impossible to classify these continental shelf installations as either buildings or chattel, but it ought to be possible to apply these rules in the same manner. By interpretation it might also be possible to classify the installations as moveable chattel, as it though were possible to break the installations down and re-use parts of them

---

[22] See Molde (1982): "The status of ice in International Law" 51 NtfIR 165 (1982), with references to relevant literature on artificial islands, however, to a large extent on drifting islands.

[23] The traditional definition can be found in Rosenmeyer (1975): "Soeret", chapter 1.

[24] See for instance In re United States Air Force Texas Tower No. 4 203 F.Supp. 215 (Southern District of New York, 1962)(pg. 219).

[25] See Rodrigue v. Aetna Casualty and Surety Co. 395 U.S. 352 (1969).

[26] Act no. 154 of May 10th 1967, as amended by Act no. 34 of January 1st 1979.

elsewhere.

According to art. 47 of the Danish Land Registration Act[27], it is possible to mortgage the installations of commercial enterprises. As all sorts of movables and non-movables can be mortgaged in accordance with this provision, it might be possible to include offshore installations under this article under a wide interpretation. According to art. 47, sec. 2, the registration takes place by the district court at the main place of business of the debtor, and if the debtor does not have an office in Denmark the registration takes place be the Copenhagen city court. It is not a condition that the goods are physically placed within Danish territory[28].

10.3.1.4. Other applicable acts.

If the theory deduced in section 10.2. above is true, then all Danish law applies to these installations to the extent that no specific Greenlandic acts have been adopted. Of particular importance then is the Danish Act on Certain Marine Installations, which regulates measures concerning safety, supervision and accidents[29].

10.3.2. Floating equipment for stationary use

10.3.2.1. Characteristics.

Certain types of production platforms, as well as housing platforms and quay installations, are floating and must therefore be characterized as movables, since they can be towed to other places of production. The characteristic is that they are floating and moveable, but they are, however, situated at a given production site for a long term period, and the possibility of moving them is only seldom used.

10.3.2.2. Installation or ship.

---

[27] Act no. 622 of September 15th 1986.

[28] See W.E.von Eyben: "Panterettigheder", chapter 22, Gad, Copenhagen (1989).

[29] Act no. 292 of June 10th 1981.

Due to the definitions laid down in the Ship Register Act[30] art. 2, par. 2 and 3, the floating stationary production platforms and housing platforms intended for continuous human stay, are in some respects treated as ships. The law applying to these platforms is discussed in section 10.3.3. below.

The installations remaining in this section are then floating, stationary equipment, not intended for human stay, e.g. quays, bouys, docks, containers etc. These installations fall within the definitions of art. 2, par. 2, of the Ship Register Act, which lays down, that floating docks, cable rollers, floating containers and similar equipment are not regarded as ships in respect of the application of the law. This is also consistent with American law and practice[31].

10.3.2.3. Registration and mortgage.

As this equipment cannot be considered ships or stationary installations, it must be defined as moveable chattel. In this way, there is no legal problem in mortgaging this equipment in accordance with Greenlandic and Danish law in this field. As described under section 8.2. above, these mortgage deeds will have to be registered with the Greenlandic High Court.

10.3.2.4. Other applicable acts.

Because this equipment is regarded as equipment for exploration and exploitation under the Continental Shelf Act, and also because it is usually located within the safety zones of exploitation or exploration platforms, Danish and Greenlandic law applies to equipment in this section.

10.3.3. Floating, moveable equipment

---

[30] Act no. 93 of March 29th 1957, as by Act no. 57 of February 14th 1986.

[31] Floating dry docks were not considered vessels in the cases Berton v. Tietjan & Lang Dry Dock Co. 219 F. 763 (pg. 774)(District New Jersey, 1915) and Coie v. Vallette Dry Dock Co. 119 U.S. 625 (1887). An anchored floating wharf boat was not considered a vessel in Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co. 271 U.S. 19 (1926).

10.3.3.1. Characteristics.

Several kinds of equipment fall within this group, for instance drilling ships, drilling platforms and other floating platforms can be mentioned.

A drilling ship is more or less an ordinary ship with a drilling rig placed mid-ship. The drilling is done through the bottom of the ship, and during the drilling the ship is kept stationary by anchors or screws placed on all sides of the vessel. A drilling ship usually has its own machinery for navigation, and therefore does not have to be towed from one site of work to another.

A so-called semi-submersible drilling platform consists of a vertical drilling deck built on pontoons, with the drilling rig erected on the drilling deck. A semi-submersible floats both during drilling operations and during transport from site to site. During the drilling, the platform is kept stationary in the same ways used by a drilling ship, but the platform is usually not equipped with propulsion machinery of its own, and therefore has to be towed from site to site. Floating production platforms are more or less constructed in the same way.

A jack-up drilling platform also floats, but its special feature is that it is equipped with 3 or 4 steel legs. The legs can be lowered or raised by machinery on the drilling deck. When a drilling is to take place, the legs of the platform are lowered until they rest on the sea-bed; then the platform is raised until it is somewhat 25 meters above sea-level. During transport from one place to another, the platform floats, while the legs are partly under water to stabilize the platform. Because of the limited length of its legs, a jack-up drilling platform can be used only at depths of up to approximately 75 meters; however it is the most stable type of drilling equipment.

Drilling ships and drilling platforms are mainly used for exploratory drilling, which means that they are usually situated at the same place for a time period not exceeding a couple of months.

10.3.3.2. Installation or ship.

All the offshore equipment in this group is regarded as installations in the sense of the Continental Shelf Act. But at the same time it is regarded as ships in the sense of the Ship Register Act.

The Ship Register Act institutes the Royal Danish Register of Shipping, which

administers two registers, namely the Ship Register and the Vessel List. According to art. 2, par. 3, "Barges, lighters, dredge–machines, floating cranes and the like are regarded as ships, but are excepted from the obligation to register pursuant to art. 1, if they are not equipped with machinery for propulsion". This means that the listed equipment does not have to register in the Ship Register, but it has to be listed in the Vessel List in accordance with art. 43.

Drilling ships and platforms without propulsion machinery are regarded as belonging to this group under the term "the like"[32]. Equipment with propulsion machinery, i.e. most drilling ships, are ships with the full obligation to register in the Ship Register. In other words all the floating exploitation equipment is registered as ships or vessels in one way or other.

Also under American law, semi–submersible drilling rigs have been held vessels[33].

10.3.3.3. Registration and mortgage.

In sum, all floating exploitation ships and platforms with Danish or Greenlandic owners have to register in either the Ship Register or in the Vessel List. The vessels or platforms, which have the obligation to register in Vessel List only, may upon application be registered in the Ship Register instead in pursuance of art. 44.

According to art. 47 it is necessary to register the drilling equipment in the Ship Register, if mortgage deeds are to be registered. Like other vessels, the floating drilling equipment under this section cannot be mortgaged under the legal protection of the laws applicable to moveable chattel[34]. This entails that vessels and platforms listed in the Vessel List only, cannot be mortgaged in practice. But, as mentioned, it is only a matter of registering the platforms in the Ship Register instead.

When the equipment is admitted to the Ship Register, mortgages, distraints etc. can be

---

[32] Cf. Christrup (1976), supra.

[33] See Offshore Co. v. Robinson 266 F.2d. 769 (pg. 779)(5th Circuit, 1959) and Decision of the US District Court for the Southern District of Texas In the matter of the complaint of SEDCO, Inc., dated March 30th 1982, civil action no. H–79– 1881, reproduced in 21 ILM 318 (pg. 337)(1982).

[34] The Land Registration Act, chapter 7.

registered in accordance with the detailed rules laid down in chapters I.B and III.A of the Ship Register Act.

It shall here be mentioned that under American law, American registered drilling platforms can also be subject to ship mortgage[35].

10.3.3.4. Other applicable acts.

It was concluded above that all floating exploration or exploitation ships and platforms are considered to be ships in the sense intended in the Ship Register Act. When another act states that it does or does not apply to registered ships, then this term includes floating exploration and exploitation equipment registered in accordance with the Ship Register Act. For instance, the Act on the Law Applicable to the International Sale of Movables[36] specifically does not apply to registered ships. Therefore this Act does not apply to floating platforms, since the decisive point is whether the construction is registered as a ship or not.

But the term "ship" in other acts does not necessarily comprise all constructions registered as ships in the sense of the Ship Register Act.

When determining whether the word "ship" in a given act also includes drilling ships, floating drilling platforms and production platforms, attention must be paid to the purpose of the Act in question, as many Acts were adopted before offshore exploitation was seriously considered. Of importance might also be the type and the situation of the drilling ship or platform in question[37]. For instance, there would be no reason not to consider a drilling ship as an ordinary ship in all respects, when it is not drilling but crossing the seas like any other ship. On the other hand, one feels less obliged to consider a stationary pontoon platform as a ship to the same extent. General guidelines probably cannot be made.

A consequence of that exploitation equipment is regarded as installations in some

---

[35] For instance the Sedco 135 semi-submersible concerned in In the matter of the complaint of SEDCO, Inc., supra, was subject to a preferred ship mortgage.

[36] Act no. 122 of April 15th 1964, transmitting the Hague Convention of 1955 on the Law Applicable to the Sale of Movables.

[37] Under American law the situation seems to be without significance. In In the matter of the complaint of SEDCO, Inc., supra, pg. 338, the court concluded "that anchoring in place what is otherwise a vessel does not change a craft's status..."

respects and as ships in other respects, or as both, is that the governing legislation may overlap.

The Danish Maritime Code[38] presumably applies only in certain respects, as the Code is mainly intended to be used for fishing vessels and merchant shipping and similar navigation. The rules on part ownership and transportation of goods are not of much use in this connection, while the provisions on collision and salvage presumably apply, as the practical and legal problems of, for instance, salvage money or liability are of the same kind, whether one is dealing with a ship or a platform.

The Act on Security of Ships[39] also applies to exploitation equipment; at least when it is moving. When the equipment is stationary, the security and official supervision is ruled by the guidelines of the Act on Certain Marine Installations[40].

The Act on Ships Manning[41] and the Seamens Act[42] probably do not apply directly to platforms, as the crews of these do not have a naval education and moreover conduct a work similar to that in industries on land.

It has to be added that when a ship or a platform is registered outside Denmark, then the legal problems discussed above do not arise, since most of the mentioned Acts apply to Danish vessels alone. When equipment used on the Danish shelf is registered in another country, the legal conflict will be between all the acts in force by the general references in the Continental Shelf Act and the law of the flag state. There is no doubt that drilling ships and platforms are under Danish and Greenlandic law and jurisdiction, when they operate on the Danish continental shelf; this is so even if they are registered in another state and carry a flag of another state.

---

[38] Announced by Act no. 141 of April 1st 1985.

[39] Act no. 98 of March 12th 1980, as amended by Act no. 857 of December 23rd 1987.

[40] See note 28 above. Statutory order no. 521 of August 30th 1988 is issued pursuant to this Act and applies to moveable equipment only.

[41] Act no. 239 of June 6th 1985 with later amendments.

[42] Act no. 519 of December 12th 1985 with amendments. Not directly applicable to ships registered in Greenland, cf. art. 77.

The problem arises if the law of the flag state regards itself applicable not only when the ship is sailing, but also when it is operating on the Danish continental shelf. For instance, if an American registered drilling ship is sailing outside territorial waters, it is, in accordance with the traditions of maritime law, governed by American federal law, since this is the law of the flag state. But when the drilling ship starts drilling in the Danish continental shelf, then Danish law applies, and the collision of laws may occur. If an accident takes place on board, and the legal aspects of liability are brought to court in Denmark or Greenland or in the United States, the court may use either lex fori[43] or lex loci[44] as applicable law[45]. If the lex fori principle applies, then an American court will use American law and a Danish court will use Danish law. If the lex loci principle is used, then the court may state that the incident took place on board an American vessel, and that therefore American law applies in pursuance of traditional maritime law and the flag state principle. Or, still using the lex loci principle, the court may state that the incident took place in an exploitation area of the Danish continental shelf, and that therefore Danish law applies pursuant to the Danish Continental Shelf Act and the Continental Shelf Convention. In case of doubt, an American court would probably choose American law as lex loci, and a Danish court would probably choose Danish law as lex loci. In doubtful cases, and as a matter of convenience, lex loci then is lex fori in practice.

In a case following the 1979 oil well blow out and oil spill in the Gulf of Mexico caused by an accident at an American registered semi-submersible drilling platform operating at the continental shelf of Mexico, an American court stated that "a semisubmersible drilling rig is a vessel for purposes of the (American) Limitation of Liability Act and Sedco (the owner) may invoke the provisions of that act with respect to the claims brought against the SEDCO 135 rig"[46].

---

[43] The law of the forum, which means the law of the country where the court is located.

[44] The law of the location, which means the law of the place where the incident took place.

[45] If the court does not dismiss the case because of lack of jurisdiction, which is legally much less complicated.

[46] In the matter of the complaint of SEDCO, Inc., supra, pg. 338.

10.3.4. Ships

Tug boats, tankers, bulk carriers, supply ships, ice-breakers and various other kinds of ships are used in connection with offshore exploration and exploitation. But these vessels are not considered installations in the sense of the Continental Shelf Act, and are considered ordinary ships in the eyes of the law.

10.4. ACTIVITIES OFF GREENLAND TILL PRESENT

From 1969 on, some prospecting took place at the continental shelf adjacent to Greenland. The prospecting was conducted by both official authorities and by private companies, which had the Ministry's permission to conduct certain well-defined surveys, for instance aeromagnetic surveys, seismic surveys, gravimetric surveys, current measuring, radiometric measuring as well as the collecting of samples from the sea-bed without drilling.

Permission for such prospecting were granted free of charge and did not include or entail any exclusive rights or preferential position to the private party. The private prospectors had the obligation to forward all collected information and data to the Ministry. On the basis of the available data on offshore geology, the Ministry for Greenland on July 15th 1974 issued an invitation to submit applications for petroleum exploration and exploitation concessions in certain marine areas off the west coast of Greenland. According to the preparatory works of the concession round[47], the economic risks involved in offshore oil exploration made it necessary to combine the granting of the exploration rights and obligations with exploitation rights, whereby the granting procedure had to be in accordance with the exploitation concession procedures as instituted by the 1965 Mineral Resources Act.

The overall area to which applications were invited was selected also on the basis of the interest in acquiring concessions here, and because there is open water all year round, providing favourable shipping possibilities. The offshore areas between the southern tip of Greenland and latitude 72*N., which is found about half way up the west coast, were

---

[47] See Udvalget vedroerende tilladelser og Koncessioner (1974): "Rapport til Ministeren for Groenland", Ministeriet for Groenland, April 1974.

divided into a system of rectangular blocks of about 400 square kilometers each. Three offshore zones, 63*–64*N., 65*–68*N. and 69*–70*N., were made available for application.

A precondition for obtaining a concession was that the ultimate parent company would give a declaration to the effect that it endorsed the application with its economic, technical and scientific resources. Furthermore, the applicant was obliged to establish an organization in Denmark for the carrying out of the offshore operations. Finally, the terms of a model concession worked out by the Ministry would not be open for individual negotiations.

By October 15th 1974 the Ministry had received 21 applications, and after negotiations, the Minister on April 8th 1975 granted 13 concessions comprising 46 blocks to 6 groups comprising 20 companies and consortias. The groups were: 1) Amoco, Deminex and PanCanadian, 2) Chevron, BP, Saga and NIOC, 3) ARCO, Cities Service, Hispanoil and Hudbay, 4) Mobil, Amoco, Deminex and PanCanadian, 5) Total, Gulf, Aquitaine and Grepco, and 6) Ultramar, Murphy, Gold Fields and Bomin.

The allocated concessions covered some seven per cent of the continental shelf off West Greenland. The concession areas are shown on a map in Appendix 4.

As for the minimum of expenditures on exploration, the accumulated obligations of the 13 concessions amounted to around 500 million Danish kroner within the first three years[48].

During 1976 and 1977 five exploratory drillings were made:

One drilling under concession no. 34 at position 66*09'N. latitude and 56*11'W.longitude, by the dynamic positioned drilling ship "Pelican".

A drilling by the dynamic positioned drilling ship "Sedco 445" at position 67*53'N.latitude and 56*44'W.longitude, which is under concession no. 31.

Two drillings under concession no. 32 at position 65*32'N. latitude and 54*46'W.longitude were made by the dynamic positioned semi-submersible drilling platform "Sedco 709".

At position 66*56'N.latitude and 56*35'W.longitude under concession no. 28 one drilling was made by the dynamic positioned drilling ship "Pelerin".

---

[48] More details of the concessions are described by Hesselbjerg (1976): "The start of oil exploration in Greenland" 45 NTfIR 19 (1976). See also Thylstrup in Daintith, Terence C.(ed)(1981): "The legal character of petroleum licenses; A comparative study", Dundee (1981), pp. 176–184.

No oil was discovered, but indications of gas were found in two of the holes. In 1979 all concessions were relinquished by the companies. The companies had to pay approximately 72 million DKK to the State by reason of resigning the concessions before they had completed their exploration obligations[49]. Offshore explorations have not taken place since, except for survey programmes with public financial background.

[49] Cf. Press releases from the Ministry for Greenland dated April 25th and May 3rd 1979.

Frants Dalgaard-Knudsen

MINERAL CONCESSIONS AND LAW IN GREENLAND

VOL. II.

1991

11. THE CONCEPT OF CONCESSIONS[1]

11.1. EXPLOITATION ACTIVITIES AND THEIR FORMAL BASIS

Many states in the world frequently establish arrangements whereby private or public companies obtain a right to extract certain raw materials from the surface or the subsoil of the earth. It is generally accepted that the powers of a government include the power to involve a people and a nation in such an arrangement with an individual[2]. Since it is a state power which makes disposals concerning a part of its own territory on behalf of the nation, an exploitation arrangement will as one of its legal elements involve a state's utilization of its sovereignty, and consequently the arrangement will frequently appear as an act of sovereignty, and be designated a concession or a permit, despite the fact that it may be a codification of the mutual intentions of parties to an agreement. It has been claimed that the modern concession remains a concession (only) in the sense that through it the state grants property rights direct to a foreign or a foreign owned entity[3].

Being entitled to exercise its sovereignty, the state is a natural party to the arrangement concerning the exploitation of raw materials. The state also has some natural and strong interests in the results of this arrangement, and therefore also in its planning and development. The State is the supreme protector of the general interest[4].

The interests of the state may chiefly be divided into two groups, which may conflict in the short or long term. On the one hand, there are the purely economic interests in the procurement of economic benefits for the state and its people; on the other hand, there are

---

[1] Parts of this chapter have previously been published in the articles "Exploitation Concessions: Contracts or Permits?: Contributions from the Norwegian Phillips/Ekofisk case" in (1987) 5 J.E.R.L. 165 and "Udvindingskoncessioners retlige kvalificering" in Marius no. 142 (Oslo, 1987).

[2] As a general reference, see James Alan (1986): "Sovereign Statehood" Allen & Unwin, London (1986).

[3] See dr. S.K. Date-Bah & Makbul Rahim (1987): "Promoting petroleum exploration and development: Issues for government action" in Khan (ed): "Petroleum Resources and Development" Belhaven Press, London (1987) pp. 93 (at pg. 98).

[4] According to the Aminoil Award, section 10; 21 ILM 976 (1982) at 1001.

the interests which follow from the state's obligation to protect its territory and its people. This latter obligation may, however, also include a duty to secure the supply of raw materials.

This leads to the question of the legal classification of these arrangements. This is quite an important question, since it determines which legal norms apply to the arrangements. And this is crucial in determining the outcome of disputes and attempts to change such arrangements. Not surprisingly, the different legal systems across the world have dealt with and answered this question in different ways[5].

11.2. TERMINOLOGY

In the attempt to classify the exploitation regimes, a layman would probably attach decisive importance to the terminological labelling of the documents. Also persons who do not consider themselves laymen, and in particular politicians, might implicitly or psychologically experience the headline terminology and the commonly used terminology referring to the arrangements as the starting point for any further discussion[6]. It is difficult to avoid the unspoken starting point of the discussion, but the legal discussion must not turn into "Begriffs-jurisprudenz".

This word could be the sub-heading of this section, and it indicates that the section deals with jurisprudence based on the determination of the exact and traditional meaning of the terminology used. It is a terminological discussion, and the purpose of including it here is to preclude any categorical conflicts based on terminological presuppositions, because the following chapters are not based on strict concepts of terminology. This kind of jurisprudence, the "begriffs-jurisprudenz", is not contextual in its method, and the term was actually first used by legal scientists opposed to this kind of jurisprudence. Consequently, the term carries certain pejorative overtones. As shown below, it is quite inappropriate to use a strict and narrow interpretation of the terminology used to refer to

---

[5] See the survey and the conclusions of Daintith, Terence C.(1981): "The legal character of petroleum licenses: A comparative study" Dundee (1981), chapter 1.

[6] As an example might be mentioned the discussion in Indonesia, referred to in Asante (1979): "Restructuring transnational mineral agreements" 73 Am.J.Int.L. 335 (1979) at pg. 359.

raw material exploitation arrangements. A contract does not become a permit just because its title states that it is a permit, and vice versa.

As indicated in the introduction, a certain linguistic confusion prevails over which terminological designation should be attached to the particular legal arrangements which create the formal basis of exploitation activities. In Denmark, a "sole and exclusive license" was originally used as the basis for the exploitation of oil, but now the Ministry of Energy issues "permits", to which there certain "agreements" concerning particular problems are attached. At the Norwegian continental shelf, the formal basis has always been an "extraction permit" in conjunction with "agreements" on various issues. Both the Danish and the Norwegian authorities have, however, used the term "license" instead of "permit" in their translated English versions. All in all it may be concluded, that the Danish and the Norwegian North Sea terminology are quite similar. As regards Greenland, it may be added that the Danish Ministry for Greenland has always used the term "concession" to refer to any kind of exploitation rights, whether these concerned offshore or inland extraction of oil or other minerals.

As regards the exploitation of ore on the Norwegian mainland, as well as at Svalbard, to which special rules apply, the legal terminology includes the expressions "konsesjon" (concession), "muting" and "utmaal". Similarly, in Finland and in Sweden, the expressions "mutning" and "utmaal" are also used in connection with the extraction of ore. The Swedes use the term "koncession" in legislation applying to the exploitation of oil and coal. However, the legal systems which are used in the North Sea and in Greenland are somewhat different from the "utmaal"– and the "mutning"–systems; for this reason, they will not be dealt with in detail here.

In the ordinary use of the Scandinavian language, one would generally use the expressions "koncession" (concession) and "udvindingstilladelse" (extraction permit), in much the same way as the expressions "concession" and "license", or "agreement" and "contract" are used in the English speaking world. The English "concession" and the Scandinavian "koncession" both have their roots in the Latin "concessio", which means to permit or to allow, and the terms correspond to the German "konzession" and the French "concession". According to "Ordbog over Det danske Sprog" (The Dictionary of the Danish Language), the word in its legal sense is most often used with reference to foreign phenomena concerning permits or licenses, especially exclusive licenses, granted by a high

ranking authority. According to "Black's Law Dictionary", the word "concession" in the English language is used chiefly to refer to the grant of specific privileges from the State. Similarly, the same dictionary defines the term "license" as a privilege granted by a state or a head of state; it is a permit from a competent authority to conduct a certain activity, which would otherwise be illegal.

The various authorities grant concessions and permits for many and highly varied purposes. By way of example, one may mention railway concessions, telecommunication concessions, commercial licenses and building permits, as well as raw material extraction permits, or exploitation concessions. But it may be the case that practice in the field of oil exploitation over time has changed the original concept and understanding of the expressions "concession", "license" and "permit". In the oil business, it appears that the expressions include contracts and agreements between a state authority and private parties.

Part of the explanation for this may be found in the fact that originally oil exploitation was exclusively and still predominantly carried out by multinational companies. In particular, Anglo-American companies, which have their main places of business in states with Common Law legal systems. In contrast to this, the legal system in the Nordic countries is related to the continental European legal systems, which have their roots in the Roman law traditions of codification. Clearly, the Anglo-American companies may have been reluctant to let their activities be governed by the different laws and legal traditions of other nations, and instead preferred something more palpable, solidified by comprehensive, written agreements. An illustration of this is the fact that some legal theory for a number of years regarded oil concessions in the Middle East as similar to international law treaties[7].

It is quite possible that the traditions of the oil companies have led to the incorporation of Common Law contractual traditions into Scandinavian concessions. On the one hand, it should be mentioned here that Scandinavian exploitation permits have never been regarded as international treaties, and have always been explicitly governed by national law and legislation. But, on the other hand, the permits do resemble codifications of complex agreements, and they do incorporate certain contractual traditions. So, the private company

---

[7] Cf. the comprehensive discussion of this problem by Foighel, Isi (1963): "Nationalization and Compensation" Stevens & Sons, London (1963), pp. 158-171, with references to a number of american authors with this standpoint.

and the issuing authority may have intended that their relationship be contractual in character, so that the arrangement fell within the sphere of private law.

Around in the world multinational companies and host countries are cooperating in the exploitation of natural resources, and the cooperation takes place to the economic benefit of both parties under many different legal regimes and document labels, like technical assistance agreements, service contracts, production sharing contracts, joint ventures and concessions. With these different types of arrangements in mind, it has been suggested that the pragmatic consequences of a much heralded order may not be as dramatic as a change in contractual labels would imply[8].

In what follows, the terms "arrangement" and "concession" will be used as the neutral names of the formal basis for the exploitation activities, in preference to the more tendentious labels "contract" and "agreement", on the one hand, and "permit" on the other hand[9]. As regards the term "concession", such use implies that the traditional Latin concept of concession does not apply.

11.3. SURVEY OF THE CONCESSION CONCEPT IN VARIOUS COUNTRIES

Above it was suggested that foreign legal practice may have infiltrated the Scandinavian legal view of oil- and mining-concessions. Accordingly, it seems appropriate to make a brief examination of the legal situation outside Scandinavia, before going into details of Scandinavian law.

The climatic conditions in Greenland make it obvious to try to compare to the situation in Antarctica. However, exploitation has not taken place here and the governing supranational regime here is unique, and therefore the legal system is not of direct interest in this connection[10].

---

[8] See Delaume, Georges R.(1983): "Transnational Contracts - Law and Practice" Vol. I.2, Oceana, New York (1983) at pg. 34.

[9] "Konsesjon" (concession) is also used as a neutral concept by Frihagen, cf. Frihagen, Arvid: "Studier i Oljerett, Beregning af Royalty", Oljerettsfondet, Bergen (1979).

[10] For information see the Convention on the Regulation of Antarctic Mineral Resource Activities of 2. June 1988, reproduced in 27 ILM 859 (1988), and David A. Colson (1989): "The evolving antarctic legal regime" 83 Am.J.Int.L. 605 (1989).

11.3.1. Common Law.

11.3.1.1. Private Law and Administrative Law.

In the Common Law legal system of the English speaking world there is not as sharp a division between Private Law and Public Law as in the legal systems of continental Europe. The English speaking world has evolved a concept of Administrative Law[11], but this is a part of Common Law, and therefore does not imply a systematic partition of the spheres of Private Law and Public Law. Common Law jurisprudence of course recognizes a distinction between the private and the public spheres, but at the Continent the jurisprudence of public law and the jurisprudence of private law are distinct and systematically divided.

If one, in connection with a continental European legal classification of exploitation concessions, seeks theoretical contributions from Anglo-American and Australian literature and court practice, one has to bear in mind that those theoretical conclusions and statements are of limited value in the context of continental law, since Common Law jurisprudence does not have the same systematical problems and impacts to take into account[12].

Most Common Law lawyers, who have concerned themselves with exploitation concessions, have concluded that the relationship between the State and the concessionaire, or whatever label have been attached to the parties, is a mixture of Public Law and Private Law[13]. Furthermore, the proportions of Public Law and of Private Law have been

---

[11] The concept of administrative law comprises only some of the legal fields which constitute the concept of public law in continental Europe. About the development and nature of British administrative law, see Wade and Bradley (1985): "Constitutional and administrative law" 10. ed., Longman Group Ltd. London (1985), at pg. 593 ff.

[12] As early as 1944, Guldberg (1944) concluded that the Anglo-American theories on concessions were superficial, see T. Guldberg: "Internationale Koncessioner. Et Internationalt-finansretligt problem", Nordisk Tidsskrift for International Ret 1944/45, pg. 45.

[13] See for example O'Connell, D.P.: "The Law of State Succession", Cambridge (1956): "The relationship is one of mixed public and private law" (pg. 107), Cattan, Henry: "The law of Oil Concessions in the Middle East and North Africa", Oceana, New York (1967): "The oil concession can be said to combine elements of private law with elements of public law" (pg. 20) and Falkner, R.P.: "The Contractual Powers and Liabilities of the Crown and State participation in petroleum development", 14 Victoria University of Wellington Law Review 75 (1984): "There can be inequitable results when either the dictates of public law or contract law are permitted to take undue precedence" (pg. 76).

discussed, but these discussions are not of any immediate use in the context of continental jurisprudence, because of the differences in legal background and method.

11.3.1.2. In the United States.

There are major differences in legal practice concerned with raw material exploitation between the United States on the one hand, and the Commonwealth countries on the other. Other differences of practice arise among individual states of the United States, as well as among the countries under the British Crown.

For several years, the US Federal authorities have concluded contractual agreements concerning the extraction of oil from the continental shelf. The contracts are standard forms established by the authorities, so that only the terms on duration, area fee, royalty, bonus and other specific conditions are left open to negotiation with private bidders. The terminology of the agreements indicate that the authorities regard the relationship as comparable to rental or leasing[14]. However, the contracts also include references to administrative regulations concerning working conditions etc.

In some states, as for instance in Texas and in North Dakota[15], the right to explore for and to extract oil is regarded as an aspect of a property right which follows from the title to land or to independent mining claims[16]. For this reason, the question of a mixture of Private Law and Public Law does not arise to the same extent, since land owners may simply lease their exploitation rights to an oil company. The same principle applies to coal in West Virginia[17].

In Alaska, there are three major land owners; the Federal Government, the Alaskan

---

[14] Expressions like "rentals", "Lessor" and "Lessee" are used.

[15] See the survey of Anita Gefreh Himebaugh (1983): "An overview of oil and gas contracts in the Williston Basin" 59 N.D.L.R. 7 (1983).

[16] See Thomas H. Duncan (1982): "Oil Shale Mining Claims: Alternatives for resolution on an ancient problem" 19 P.L.R.L.D. 328 (1982).

[17] See Charles H. Gage (1984): "Drafting a contract mining Agreement" 86 W.Va.L.R. 821 (1984) and Henry McC. Ingram and John H. Lawrence (1984): "Contract mining Agreements" 86 W.Va.L.R. 853 (1984).

State and the Alaskan Native Corporations, all of which used to be strong supporters of the leasing system. Over the last decade, these landowners have been reassessing their institutional arrangements and they have become more actively involved in the decisions as to how, where and when the resources are to be developed[18].

11.3.1.3. In the British Commonwealth.

The most important of the Commonwealth countries, Australia, Canada, New Zealand and the United Kingdom, share the common feature that the Crown plays a significant role in the allocation of exploitation rights. There is, however, some academic dispute over the question of whether the Crown may conclude Private Law contracts without statutory power and with reference to the Common Law alone[19], and divergences may be discovered in the practices of the countries. There is no doubt, however, that the Crown, i.e. the government, may enter into contracts when it has statutory power to do so. The question arises, for instance, if the government acts beyond its statutory power, but acts within its normal competence according to Common Law practice, or if a statutory act interferes with a field which was previously governed by Private Law under the Common Law.

As concerns the law applicable in the Australian provinces, it has generally been assumed that unless an exploitation agreement has been sanctioned and ratified by an act of parliament, it is partially or entirely invalid to the extent that it prescribes a) an obligation on the authorities to exercise in a particular manner the discretionary, statutory powers which it is given in the interest of the general public, b) that the authorities shall manage state property in an unauthorized manner, or c) that there shall be issued permits or the like by procedures other than those pursuant to statutory acts[20]. In general, a private

---

[18] See Krueger, R.B. & Moyer, C.A. (1982): "Trends in arrangements for the development of Alaskan Petroleum Resources", 12 UCLA-Alaska L.Rev. 1.

[19] In favour and against respectively, see for instance Falkner (1984), op.cit, pp. 76 f, and McNamara, Philip: "The Enforceability of Mineral Development Agreements", 5 The University of New South Wales Law Journal 263 (1982), pp. 265 f, both with references to theory and practice.

[20] Cf. McNamara (1982), pp. 283 f. It is common, however, for the authorities to conclude agreements which subsequently are adopted in the form of statutory acts, cf. Crommelin, Michael: "A New Era of Concessions? The Government Agreement in Australia", International Bar Association, International Energy

party does not seem to hold a particularly strong position in the event of subsequent legislative regulation effecting the contractual relationship[21].

In Canada, different legislation applies in each of the provinces, but as regards the territories and the continental shelf, new and uniform rules were introduced in 1982 by The Canada Oil and Gas Act. This Act lays down very detailed rules on when and under which procedures and conditions the Minister of Energy, Mines and Resources may enter into oil and gas exploration agreements with private individuals. An exploration agreement comprises an exclusive right for the private party to obtain a production license[22]. The agreements may be regarded as contracts in which the authority of one party, the public party, is prescribed and limited by a statutory act. However, the 1982–Act includes also new regulatory and controversial parts concerning public participation[23].

The New Zealand Ministry of Energy Act of 1977 lays down the rule that on behalf of the Crown, the Minister of Energy may, either alone or jointly with private individuals, exploit sources of energy and minerals. In practice, this takes place through a state–owned company, Petrocorp, which concludes contracts with private companies[24]. Thus the Crown does not enter into contracts directly with private individuals.

By an act of 1934, all oil deposits in the British subsoil became property of the Crown. Until 1964, the extraction of oil from the British share of the North Sea continental shelf was not in the main regulated by statutory acts. The authorities over time established certain standard forms of oil licenses, and activities were formally controlled through the licenses, which were regarded as special, contractual relationships between the Crown and

---

Law, Houston, Texas (1984), pp. 693–716.

[21] Cf. Crommelin, Michael: "The legal character of petroleum production licenses in Australia" in Daintith (ed.): "The legal character of petroleum licences: A comparative study", University of Dundee, Dundee (1981), pg. 100.

[22] Cf. art. 9 of the Canada Oil and Gas Act.

[23] See Cecil J. Olmstead et al (1984): "Expropriation in the Energy Industry: Canada's Crown Share Provision as a violation of International Law" 29 McGill Law Journal 439 (1984).

[24] Cf. Falkner (1984), pp. 77 ff.

the private individuals concerned[25]. In 1975, the standard conditions of the licenses were laid down by a statutory act, which also applied to existing licenses, thereby implying certain changes in the conditions of the existing licenses. Parliament did not recognize the existence of a special, contractual relationship. Now the British licenses do not even include a reproduction of the officially stipulated standard conditions, but only a reference to them. There appears to be political acceptance of the legality of unilateral changes made in the terms of the concessions. The legality of unilateral changes is based on the fact of legislative change as a result of the exercise of Parliamentary sovereignty[26]. It may be added that extensive public intervention is not a new concept within the British exploitation sector; the British coal-deposits and mines were nationalized as early as the thirties and forties[27].

11.3.2. Civil Law.

If exploitation concessions were to be classified in accordance with strict methods taken from Roman Law, Civil Law or continental European law, the fact that a concession was granted by an act of sovereignty in the interest of the nation and the general public would imply that a concession was an act of administration, which was fully subject to the state's rights of control. It has been concluded that a consequence of classifying concessions as acts of administration would be the vesting in the authorities of certain unilateral rights of control in the interest of the state and the people, and, furthermore, from this could be deduced a right for the state to intervene in the relationship governed by the concession[28].

---

[25] Cf. Daintith, Terence C.: Paper for the European Offshore Petroleum Conference (24. - 27. Oct. 1978), (1978), and Daintith, Terence C. & Willoughby, Geoffrey (ed.): "Manual of United Kingdom Oil and Gas Law", Sweet & Maxwell, London (1984).

[26] According to Daintith & Willoughby (1984), pg. 29.

[27] See F.C. Widdowson in Ronald V. Cowles (ed)(1984): "World Coal Mining Law. A Comparative Survey" International Bar Association (1984) pg. 173 ff (at pg. 177), and in general also R.W. Bentham (ed)(1985): "The Law of Hard Minerals in 1985" University of Dundee (1985).

[28] Mosler (1948) states at pg. 38 that "Die Konsequenz einer Klassifizierung der Konzessionsvertraege als verwaltungsrechtliche Vertraege waere die Anerkennung von bestimmten einseitigen Kontrollrechten der Verwaltung im oeffentlichen Interesse. Auch ein Eingriffsrecht des States in das Konzessionsverhaeltnis wuerde sich hieraus ableiten lassen", cf. Mosler, Herman: "Wirtschaftskonzessionen bei Aenderungen der Staatshoheit. Eine voelkerrechtliche Studie zum Hoheitswechsel und zur Hoheits-ausuebung auf fremdem

11.3.3. French law.

In French public law – "droit administratif" – there are various kinds of legal concessions, which denote the transfer of administrative tasks to private individuals. The establishing of a concession implies partly contractual and partly regulatory elements, and it takes place in the form of an administrative contract – "contrat administratif". The basis of a concession is mutual consent between the concessionaire and the authorities, whereby the concessionaire on certain conditions undertakes to carry out certain tasks in the interest of the public. The duration of the tasks and the financial compensation is contractually stipulated in detail, while the tasks to be carried out are stipulated by the authorities in a so–called "cahier des charges".

The regulation and the allocation of a concession, and the contractual correlation between performance and remuneration, as well as the concessionaire's conditions for carrying out the task, together constitute the body of the complex "contrat administratif". It should be noted, however, that it is an administrative function which the concessionaire undertakes and furthermore, that the whole matter is within the competence of the administrative court. The public law element, and the public interest in the relationship, thus play an important role, and the state therefore possesses not only a right of control, but also a right to intervene if the public interest so requires.

By a so–called "concession de service public" certain administrative tasks are passed on to a private individual. Such grant takes place by an act of sovereignty, but the details are stipulated partially by contractual means, within the framework of the concept of "contrat administratif". Transport companies and energy supply are typically based on such concessions.

In French jurisprudence, oil and mining concessions were by systematical tradition treated as "concessions des services publics". However, theory has developed in accordance with court practice. According to the Conseil d'Etat, exploitation concessions constitute a separate group, sui generis, lying in between the "concessions des services

---

Staatsgebiet", Stuttgart (1948). See also Mulack, Guenter: "Rechtsprobleme der Erdoelkonzessions–abkommen im Nahen Osten", Institut fuer Voelkerrecht, Goettingen (1972), pg. 201.

publics" and purely private law contracts[29].

The French courts have also determined that the use of an authoritative standard form or a "cahier des charges" is not decisive in the determination of the character of a contract with the authorities. Furthermore, it has been expressed that if the authorities lay down the conditions of a concession unilaterally, this does not deprive a concession of its contractual character, but on the contrary makes it comparable to a "contrat d'adhesion", which is a private standard contract, which is legally interpreted in favour of the acceding party[30].

11.3.4. German law.

Up to the present the German regulation on raw material extraction has been seen as part of the law on administration of industry. The intervening characteristics of this law are acts of administration, which regulate private law relations. When such an act of administration has had impact on private law relations, it has been practically impossible to withdraw the act of administration in question[31].

In 1982, a new German federal Act on mining entered into force[32], but the German mining industry has been subject to legislation for more than a century. Previously, the allocation of exploitation rights were by acts of administration, which were seen to regulate private law relations by establishing rights.

The State has always been regarded as being entitled to determine the conditions under which private individuals may explore for, extract and appropriate raw materials[33]. The

---

[29] Cf. Conseil d'Etats' Opinion of 19. and 26. December 1907 (Dalloz Periodique, 1908, 3. sec., pp. 46 – 47), and Duez, Paul & Debeyre, Guy: "Traite de Droit Administratif", Paris (1952), pp. 607 ff, as well as Cattan (1967), pp. 80 ff.

[30] Cf. Laubadere, Andre de, et al (1988): "Traite de Droit Administratif", 9. ed., Paris (1988), and Cattan (1967), pg. 28.

[31] Cf. Badura, Peter: "Wirtschaftsverwaltungsrecht" in von Muench: "Besonderes Verwaltungsrecht", 6. ed., Walter de Gruyter, Berlin – New York (1982), pg. 338.

[32] Bundesberggesetz (BBergG) vom 13. August 1980, cf. Bundesgesetzblatt, 1980, I, pp. 1310 ff.

[33] See Huber, Ernst Rudolf: "Wirtschaftsverwaltungsrecht I–II", 2. ed., J.C.B. Mohr – Paul Siebeck, Tuebingen (1954), pp. 106 – 125.

legislation differed among the federal states, and certain minerals have been covered by special rules. But as a general characteristic, it may be said that except for certain limited preferential rights for land owners, there existed a principle of freedom to conduct mining ("Bergbaufreiheit"). According to this principle anybody could obtain a permit from the state to exploit a certain deposit of minerals. The procedure first required the interested individual to obtain a permit ("Mutung") to search for and explore mineral deposits. When the exploring individual (the "Muter") had made a commercial discovery, and if he also fulfilled certain formal prerequisites, he was granted the right to exploit the deposit ("Verleihung des Bergwerkeigentums"). The granting of the right was by a legally compulsory act of administration, whereby the entitled individual obtained an absolute right. This property right could only be repealed where the acquitor had achieved it unlawfully, or where he did not comply with a duty to conduct extraction. Furthermore, the authorities could demand a unitization of more extraction enterprises, however, without the property rights being repealed.

The new mining Act to a higher degree makes the exploitation of minerals subject to a public law concession system, but the new Act has little impact on existing rights, and existing exploitation activities therefore continue in pursuance of the old rules[34]. The new system does to some extent build upon the old rules, but the competence and the power of the authorities is considerably enlarged, since the future exploitation licenses grant only limited rights. The new arrangements could be characterized as being of an essentially administrative character. The Act also applies to the continental shelf and to the extraction of almost any kind of valuable mineral and liquid. Less valuable raw materials, e.g. gravel etc., still belong to the land owners.

11.3.5. Islamic law.

Many of the big oil exploitation agreements were concluded with Arab states, whose legal norms and traditions are subject to the Islamic religion. The establishment of concessions and contracts is not contrary to the classical legal systems evolved on the basis of the Islamic religion, but it is not possible to classify the concessions legally, since the

---

[34] The new mining act is analyzed by Kuehne, Gunther: "Oil and Gas Licensing: Some Comparative United Kingdom – German Aspects" 4 J.E.R.L. 150 (1986).

religion does not pronounce on the regulation of complicated business relationships[35]. Furthermore, traditional Islamic law does not know of systematic divisions of the law into legal areas, such as private law and public law. Where business is regulated by law, this is mostly by means of relatively sparse and new legislation.

These special circumstances led to the establishment of oil exploitation agreements between the oil countries of the Middle East and the foreign oil companies, which resulted in the evolution of new types of contracts or concessions[36], which are hardly comparable to any known institutions in either Common Law or Civil Law, or Islamic Law. By this evolution, similar conditions were offered to enterprises from Common Law countries and to enterprises from the European continent[37].

The legal classification of these arrangements was greatly disputed in numerous subsequent disputes, and both sides used arguments from both Common Law and Civil Law. The oil states sought to classify the arrangements as a kind of "contrat administratif", but this was quite difficult, since the concessionaires did not undertake a public task, and since international arbitration had frequently been agreed on; furthermore national law did not lay down requirements as regards the type of contract or the performance of the task[38]. To justify their interventions, the oil countries also pleaded principles deriving from Roman Law, such as "laesio enormis" and "clausula rebus sic stantibus". The oil companies also knew their Roman Law, and cited the principle of "pacta sunt servanda"[39]. Since then a major literature has been written on the basis of the arbitral awards in the disputes

---

35 About the application of islamic law, see the LIAMCO vs. Libya award, 20 ILM 1 (1981).

36 The sole arbitrator in the dispute between Texaco Overseas / California Asiatic Oil vs. Libya states that the deeds are indeed contracts, cf. 17 ILM 1 (1978), section 21.

37 Cf. Mulack (1972) pp. 208-209.

38 Cf. Mulack (1972), pg. 207, and section 72 of the Texas Overseas / California Asiatic Oil vs. Libya award, 17 ILM 1 (1978), as well as section 92 of the AMINOIL vs. Kuwait award, 21 ILM 976 (1982).

39 See Mulack (1972), pg. 220 ff, and the Aminoil award, supra.

concerning the Middle East and North African oil concessions[40]. However, much of the discussion has been based on general principles of law and has thus to some degree been diffuse due to the lack of national legislation covering the context of the concessions. In more recent disputes national law has been applicable, for instance the law of Qatar[41].

11.3.6. Norwegian law.

Against the background of this short, international survey, it is particularly interesting to turn to the Scandinavian legal systems, and especially the law of Norway and Denmark, because many features are involved. Broadly speaking, we are dealing with American and multinational companies, which are exploiting hydrocarbons, in areas governed by continental, civil law at a highly developed stage.

11.3.6.1. Constitutional frames.

Neither the issue of the exploitation of natural resources nor the question of the establishment of concession arrangements are dealt with in specific terms within the constitution, but several of the provisions do, of course, have effects on these matters. An examination of the constitution does not, however, reveal many immediate restrictions on the authorities as regards the exploitation of the natural resources.

As regards legislative power, art. 75 of the Norwegian constitution lays down that it is a prerogative of the parliament to enact and to repeal laws, as well as to impose taxes and duties. Pursuant to art. 3, executive power is vested in the King. According to art. 17, the King may issue and repeal Decrees concerning commerce, tariffs, trade and industry, but these may not be at variance with the constitution or the laws passed by the parliament. Furthermore, the King shall cause the taxes and the duties imposed by the parliament to be collected, according to art. 18. To carry out these tasks, the King appoints the ministers of the government.

---

[40] See for instance Pierre-Yves Tschanz (1984): "The contribution of the Aminoil Award in the law of State Contracts" 18 Int. Lawyer 245 (1984) and Fernando R. Teson (1984): "State Contracts and Oil Expropriations: The Aminoil – Kuwait Arbitration" 24 Va.J.Int.L. 323 (1984), both with references.

[41] See Wintershall a.o. vs. Qatar, 28 ILM 795 (1989).

In short the government, or the relevant minister, is entitled to issue concessions insofar as this is authorized by law, or at least, insofar as the issuance is not contradictory to laws adopted by the parliament. Under similar conditions, the government may conclude contracts with private individuals[42]. The contracts or concessions may not, however, entail any State expenditure, unless the expenditure is included in the annual State budget, which is adopted by parliament, cf. art. 75 of the Norwegian constitution. In practice, however, it is sufficient to have the approval of the parliament's finance committee. If a minister concludes a contract, without the expenditure being approved, the contract is probably valid anyway[43].

Art. 19 of the Norwegian Constitution lays down that the King (i.e. the government) shall watch over the management of the properties belonging to the State, and its privileged controls and monopolies, to ensure that they are administered in the manner determined by the parliament and to the best advantage of the community[44]. Since oil and mineral deposits are state property, as described below, there thus exists a special government obligation to administer the resources in a proper manner, which is to be determined by the parliament.

According to art. 101 of the Norwegian constitution, new and permanent privileges implying restrictions on the freedom of trade and industry may not be granted to any one in the future. This provision possibly restricts the right to issue permanent privileges which are unlimited in time[45].

11.3.6.2. The legal regime applying to oil exploitation.

Deposits of hydrocarbons and valuable minerals belong to the State according to law. As regards Norwegian offshore oil deposits, this is laid down in art. 3 of the Act pertaining

---

[42] Cf. Castberg, Frede: "Norges Statsforfatning II", 3. ed., Universitetsforlaget, Oslo (1964), pg. 103.

[43] Cf. Castberg (1964), pg. 105.

[44] The King is not thereby entitled to sell state property, cf. Castberg (1964), pg. 108.

[45] The state may grant sole and exclusive rights for shorter or longer periods, according to Andenaes, Johs.: "Statsforfatningen i Norge", 4.ed., Tanum-Norli, Oslo (1976), pg. 427.

to Petroleum Activities (1985)[46].

Over time numerous acts and decrees have applied to various aspects of oil exploitation, and the legislative conditions for oil exploitation have developed. Offshore exploration for oil has taken place since the middle of the sixties, and exploitation was initiated in the early seventies.

The Norwegians have issued licenses, also called permits, over a number of rounds. In 1965, the first 22 production licenses were granted. Over the years, the licenses have greatly developed, but they are still granted by Royal Decree, and, nevertheless, they lay down that all activities under the licenses are based on Norwegian contractual tradition[47]. In connection with the licenses, a number of agreements on various issues are concluded[48].

11.3.6.3. Administrative law aspects of the concession.

The concessions include a number of aspects emanating from administrative law. First of all, the negotiation and granting of the concessions has been carried out by the State administration. In all its activities, the administration has to pay attention to the general rules of administrative law, for instance concerning fair and equal treatment of all private persons, the general rules on public access to administrative files, the extent of statutory power granted to the branch of administration in question, the rules on appeal of decisions etc.

All these general rules are not included in the concessions, and may not be of immediate interest to the concessionaire. The concessions do, however, include a number of references to or reproductions of legislative rules with the characteristics of administrative law, for instance concerning the protection of the environment or the protection of the workers.

---

[46] Act of 22 March 1985 no. 11. As regards metals and ore, this right is provided by the Mining Act of 30 June 1972 no. 70.

[47] Art. 7 of the licenses of the 10th round of concessions.

[48] See for instance Tronslin's (1986) description of the system (in English); Tronslin, Peter: "The Norwegian Petroleum Regime", Marius no. 115, Nordisk Institutt for Sjoerett (Oslo, 1986).

11.3.6.4. Contractual elements.

Without any doubt the concessions or permits do contain contractual elements; as fairly clear examples one may point to the clauses on agreed definitions, mutual confidentiality, indemnity, arbitration and choice of jurisdiction and venue. The area of dispute concerns the degree to which the concessions include contractual elements, and what impact this inclusion may have. Some authors have claimed that the concessions are primarily governed by private law[49]; others are of the opinion that they are fully subject to administrative law[50]. Most, however, hold an opinion somewhere between these two extremes[51].

11.3.6.5. Changes in a concession relationship.

The State and the concessionaire may adopt amendments of the concession by mutual agreement as long as the parties agree and the agreement is not against the law. In such cases there is no reason not to accept such changes of the arrangements. Although the legal means of such changes may be interesting in legal theory, they are not discussed in further detail here.

The issue of unilateral state intervention in the concession is of more practical interest. The State possesses general power to pass legislation which affects both private enterprise and activities under concessions. Although various views have been expressed, it is thought that the Norwegian State's authority to pass general laws concerning environmental protection or taxation etc. cannot be limited by an agreement. Some aspects, however, can be limited by agreement, such as the due dates for royalty payment. This issue is touched upon in the discussion below in section 11.3.6.7. concerning the Phillips/Ekofisk royalty case. Norwegian jurisprudence has in recent years used much effort in the attempt to draw a border line among aspects, which can and which cannot be limited by agreement.

---

[49] Cf. for example Braekhus, Sjur: "Legal Evaluation of hitherto granted Petroleum Production Licenses on the Norwegian part of the Continental Shelf", mimeo, Oslo (1975).

[50] Cf. for example the Danish author Poul Andersen: "Dansk Forvaltningsret" 5. ed. Copenhagen (1965).

[51] See, for instance, Frihagen (1979), Andenaes (1976) and Selvig, Erling: "Konsesjonssystemet i Petroleumsvirksomheten", in Bull et al.: "Innfoering i Petroleumsrett" 2. ed., Sjoerettsfondet, Oslo (1982).

11.3.6.6. Expropriation.

The Norwegian constitution includes a provision on expropriation in its art. 105, which lays down "that if the welfare of the State requires that any person shall surrender his movable or immovable property for the public use, he shall receive full compensation from the public treasury". Norwegian court practice and especially the jurisprudence has determined that this provision is too narrowly conceived to apply to rights granted under oil concessions[52].

Consequently, much greater use has been made of art. 97 of the Norwegian Constitution in pleading to ensure constitutional protection against legislative changes of concessions. In art. 97 it is laid down that "no law must be given retroactive effect". There is no doubt that this provision protects rights acquired under contract[53], but the courts have been reluctant to use this provision in cases in which the state was involved. The question has arisen in cases where private parties have claimed that the state by agreement has promised not to alter subsequently certain legislation. The issue has thus been whether an agreement existed or not[54]. Accordingly, the legal discussion in Norway has been on the question of whether a license arrangement comprises an agreement, which could include a protected, acquired right. Jurisprudential thinking has been quite divided[55]. Since the beginning of the seventies, the licenses have included a provision, which declares that the license is subject to the law in force at any time, and that the license does not connote any limitations to the State's general right to legislate and to levy taxes[56].

11.3.6.7. The Phillips/Ekofisk royalty case.

---

[52] See for instance, Braekhus (1975), pg. 75.

[53] Cf. Odberg, Per: "Beskytter Grunnlovens para. 97 bestaaende rettigheder?", Den Norske Advokat-forening, Oslo (1982), pg. 44.

[54] Cf. the analysis of court practice by Odberg (1982), pg. 39 ff.

[55] See, for instance, Braekhus (1975), Odberg (1982) pg. 40 – 41 and Eckhoff, Torstein: "Forvaltnings-rett", 2. ed., Tanum-Norli, Oslo (1984) pg. 307, with references.

[56] See, for example, art. 21 of the 4th round license conditions.

In order to the determine the existence of an acquired right, the Norwegian courts had recently to determine, implicitly, the legal qualification of an exploitation license. The classification question was put before the Norwegian Supreme Court, which by its judgement in the Phillips/Ekofisk-case[57] has provided its contribution to the clarification of the legal situation[58].

On 19 December 1985, the Norwegian Supreme Court as third court instance delivered its judgement in the case which was originally brought to court by a number of oil companies, hereinafter referred to as the Phillips group, against the Norwegian State, represented by the Oil and Energy Ministry[59]. The Phillips group extracted oil from the Ekofisk field at the Norwegian continental shelf, and as compensation for these activities, the Phillips group paid, along with other fees, a production fee, also called a royalty, to the Norwegian State. The question was whether the Norwegian State was entitled, against the protests of the Phillips group, to change the due dates for payment of royalty, as well as its frequency of the royalty payment from half-yearly to quarterly. Such a change would have meant the Phillips group would suffer a loss of interest, while the State would reap the corresponding economic benefit.

The Phillips group, which originally consisted of three companies and later was expanded to comprise nine companies, was in August 1965 granted permission to explore for and exploit oil from a part of the Norwegian continental shelf, including the area which was later to be known by the name of the Ekofisk field. The exploitation concession, which bore the number 018/1965, was granted by the Norwegian authorities pursuant to Act no. 12 of 21. June 1963 on the exploration and the exploitation of sub-sea oil deposits, as well as in pursuance of regulations laid down in a Royal Decree of 9. April 1965. According

---

[57] Judgement of 19. December 1985 in l.no. 171/1985 (per Judge Holmoy): The State represented by the Oil and Energy Ministry versus 1) Phillips Petroleum Company Norway, 2) American Petrofina Exploration Company of Norway, 3) Norsk Agip A/S, 4) Norsk Hydro A/S, 5) Elf Aquitaine Norge A/S, 6) Total Marine Norge A/S, 7) Eurafrep Norge A/S, 8) Cofranord A/S and 9) Coparex Norge A/S. The judgement is published in Norsk Rettstidende 1985, pp. 1355.

[58] The Phillips/Ekofisk case has been analyzed in detail by Mestad, Ola: "Hoegsterettsdommen i Produksjonsavgifts-terminsaka", Marius no. 118 (Oslo, 1986), and Mestad: "The Ekofisk royalty case" ICSID Review, April 1987, as well as in the articles referred to in footnote 1 above.

[59] "Olje- og energidepartementet".

to the wording of the concession, it was granted under several conditions; first, those outlined in the concession itself; next, those described in the Royal Decree; and finally, those emanating from regulations issued at any time in pursuance of the Royal Decree.

The conditions comprised an obligation to pay a one-off fee and annual area fees, as well as a production fee, the latter hereinafter referred to as a royalty. The concession document itself did not include rules on how the royalty was to be paid, but art. 26, part 2, of the 1965-Decree laid down that the royalty was to be paid half-yearly, and within three months after the expiry of each half year term.

New rules on the exploration for and exploitation of sub-sea oil deposits were issued by a Royal Decree of 8. December 1972. The royalty stipulations of the 1972-Decree implied several changes to those of the 1965-Decree; for instance the payment of the royalty was scheduled to take place quarterly and within 30 days after the expiry of each quarter, pursuant to art. 26, part 6, of the 1972-Decree. The 1972-Decree did neither formally repeal the 1965-Decree nor did it include explicit provisions concerning its consequences to concessions granted in pursuance of the 1965-Decree.

As early as 1973, the Norwegian authorities claimed that the shortened payment intervals and the shortened payment respites of the 1972-Decree also applied to the royalty payments under the exploitation concessions granted in pursuance of the 1965-Decree. The Phillips group objected to this, and continued to pay half-yearly. The issue arose again in 1977, when the State decided to demand part of the royalty to be paid in money and part of it to be paid by means of oil, and in this connection the State's Oil Directorate presupposed that the payment stipulations of the 1972-Decree were to form the basis. The Phillips group appealed the decision to the Oil and Energy Ministry, which, however, affirmed the ruling of the Oil Directorate.

In order to have a temporary and practical solution, the Phillips group and the Oil and Energy Ministry concluded an agreement in accordance with the State's demand for quarterly payment, however, under the precondition that this agreement should not prejudice anything with regard to the position of the parties.

Subsequently, the Phillips group sued the State, which was represented by the Oil and Energy Ministry. In the Oslo City Court the Phillips group claimed compensation for the loss of interest, which the group had suffered by the shortened payment intervals and the shortened payment respites during the period from the third quarter of 1977 and through

to the delivery of the judgement of the court. The Oslo City Court found for the plaintiff, the Phillips group, as did the second court of instance, Eidsivating Lagmannsrett; so too did the Norwegian Supreme Court as third court instance[60]. Pursuant to the judgement of the Supreme Court, the Phillips group was awarded NOK. 140,267,951 (equivalent to US$ 19 mill.) as compensation for loss of interest over the period from the third quarter of 1977 and until 30. June 1985, with the addition of 10% pro anno until the day of payment, plus NOK. 675.560 to cover the expenses of the case[61].

From the reports of the case one may conclude that the court regarded the exploitation rights, or parts of them, as something different from an administrative law permit, and that this something could be suitably described in terms of contract law. The court used descriptive terminology like contract, agreement, negotiations, expectations, etc.[62] The State could not therefore find support in the general rules of administrative law; moreover, if the rules of contract law applied to the relationship, they did not support the State's position. One could say that the court tried to leave the nature of concessions in a legal grey area, but the court had to use contract law terminology to describe the situation. Therefore the result was that the State could not apply rules of administrative law in relation to this purely economic issue, and accordingly, the court had to find in favour of the concessionaire.

11.3.7. Danish law.

Most of the general remarks of theory made concerning Norway could be repeated in relation to Danish law, due to the common background of the legal systems. However, because the countries do not have common legislation, the Danish system must also be

---

[60] The grounds for the decision of the Supreme Court are quite different from the grounds of the lower instances. Their judgements are briefly analyzed by Frihagen, see Frihagen, Arvid: "The Ekofisk Royalty Case", 3 J.E.R.L. 121 (1985) and by Kaasen, see Kaasen, K.: "Norway - royalty payment terms", 3 J.E.R.L. 308 (1984).

[61] The reason that the compensation was calculated only until 30. June, and not until the delivery of the judgement on 19. December, was that a new act and a new Decree, which replaced the preceding Decrees, entered into force on 1. July, and therefore further claims could not be judged upon under the present case due to the rules of procedure.

[62] For a full analysis, see Dalgaard-Knudsen, supra (footnote 1).

discussed. In this connection one should recall that much Danish law and legislation also apply in Greenland.

11.3.7.1. Constitutional frames.

As in Norway, neither the exploitation of natural resources nor the establishment of concession arrangements are dealt with in specific terms within the constitution; however, several of its provisions have effects on these matters. Nonetheless the constitution does not disclose many immediate restrictions on the authorities as regards the exploitation of natural resources.

As regards the legislative power, it is a prerogative of the parliament with the subsequent approval of the King to enact and to repeal laws, as well as to impose taxes and duties. Executive power is vested in the King. The King may issue and repeal decrees concerning commerce, tariffs, trade and industry, but these may not be at variance with the constitution or the laws passed by the parliament. Furthermore, the King shall cause the taxes and the duties imposed by the parliament to be collected. To carry out these tasks, the King appoints the ministers of the government. This is instituted by the Danish constitution, and in particular it follows from the three-partition of powers laid down in art. 3 of the Danish constitution.

The situation is then that the government, or the relevant minister, is entitled to issue concessions which are authorized by law, or at least, which are not contradictory to laws adopted by the parliament[63]. Under similar conditions, the government may conclude contracts with private individuals. The contracts or concessions may not, however, entail any State expenditure, unless the expenditure is included in the annual State budget, which is adopted by parliament, cf. art. 46 of the Danish constitution. In practice, however, it is sufficient to have the approval of the parliament's finance committee. Even in the event that a minister concludes a contract, without having the expenditure approved, the contract will be valid nonetheless[64].

---

[63] Andersen, Poul, op.cit., pg. 80, is of the opinion that statutory power is required to issue a concession.

[64] Cf. Ross, Alf: "Dansk Statsforfatningsret", 3. ed. by Ole Espersen, Nyt Nordisk Forlag – Arnold Busck, Copenhagen (1980), pg. 864.

As mentioned in the Norway section above, art. 19 of the Norwegian constitution lays down that the King (i.e. the government) shall watch over the management of the properties belonging to the State, and its privileged controls and monopolies. A similar rule is not included in the Danish constitution, but may presumably be deduced from the general obligations incumbent on the government. Since oil and mineral deposits are state property, as described below, there thus exists a special government obligation to administer the resources in a proper manner, which is to be determined by the parliament.

11.3.7.2. The legal regime applying to oil exploitation.

Deposits of hydrocarbons and valuable minerals belong to the State according to law. The rights of the Danish State are provided for by art. 2 of the Act concerning the Use of the Danish Underground (1981)[65] and art. 1 of the Continental Shelf Act (1971)[66], of which the latter act also applies to the Greenlandic continental shelf. The rules applying to the utilization of less valuable minerals belong to the sphere of administrative law and environmental law[67].

Numerous acts and decrees have over time applied to various aspects of oil exploitation, and the legislative conditions for oil exploitation have developed. Offshore exploration for oil has taken place since the middle of the sixties while exploitation was initiated in the early seventies. Until 1984, the activities in the Danish sector of the North Sea were carried out on the basis of one sole and exclusive concession, which was granted by a Royal Decree of 8. July 1962[68]. The Decree was amended by agreements between

---

[65] Act no. 293 of 10. June 1981, which applies to hydrocarbons and minerals on land, as well as on the continental shelf.

[66] Act no 259 of 9. June 1971.

[67] See the survey by Dalgaard-Knudsen, Frants (1987c): "Mines and Quarries" in "European Environmental Yearbook 1987" by DocTer International UK, London (1987).

[68] Cf. the analysis of Engel, Uggi: "The legal character of the Danish sole concession" in Daintith (ed): "The legal character of petroleum licenses: A comparative study, University of Dundee, Dundee (1981).

the concessionaire and the Minister for Energy in 1976 and 1981[69], by which most of the concession area was relinquished by the concessionaire. This opened up the possibility of issuing new concessions in the relinquished areas, and this was done over 2 rounds of license allocations[70]. The licenses appear as comprehensive, individual contracts based on a standard permit.

11.3.7.3. Administrative law aspects of the concession.

The concessions include a number of administrative law aspects. First of all, the negotiation and the granting of the concessions has been carried out by the State administration. In all its activities, the administration has therefore to pay attention to the general rules of administrative law, for instance concerning fair and equal treatment of all private persons; the general rules on public access to administrative files; the extent of statutory power granted to the branch of administration in question; and the rules on appeal of decisions etc.

11.3.7.4. Contractual elements.

As in Norway the concessions or permits ostensibly contain a number of clear contractual elements[71]. It has been concluded that the oil concessions are documents with strong elements of a mutual relationship of obligations, based on private-law-like contract stipulations[72]. The important theoretical dispute concerns the degree to which the concessions include contractual elements, and what impact this may have on the legal

---

[69] The Decree was basically changed by the agreements, which never were issued as Decrees. The agreements were made within the frames of private law.

[70] The license regime has been examined by Roenne, Anita & Budtz, Michael (1984): "Den retlige regulering af efterforskning og indvinding af olie og gas fra Danmarks undergrund", Ugeskrift for Retsvaesen, 1984 B, pg. 369. See also Roenne, Anita (1988): "Offentlig regulering af olie og naturgasvirksomheden i Danmark" Marlus no. 149, Nordisk Institut for Soeret, Oslo (1988).

[71] See, for example, the Danish Model Licence for Exploration for and Production of Hydrocarbons, 2. round, July 1985.

[72] See Roenne, Anita (1990) in Blume et al: "Retlig Regulering" Akademisk Forlag, Copenhagen (1990), at pg. 229.

treatment of the entire arrangement.

11.3.7.5. Changes in a concession relationship.

Practice has shown that the State and the concessionaire may adopt amendments to the concession. As mentioned above, the relinquishment rules of the original sole concession covering all of Denmark were changed by an agreement between the private party and the State. This took place in the form of a written and signed contract, despite the fact that the concession was originally given by Royal Decree. Both parties, the concessionaire and the State have since respected the agreement[73].

The sovereign State possesses general power to pass legislation which has impacts on private enterprise and on activities under concessions. The Danish State's authority to pass general laws touching upon concession affairs cannot be limited by an agreement. This is a result of the constitutional sovereignty of the Parliament. Similarly, the Parliament may adopt general acts applying to the field of law of contracts[74].

One may suppose that problems arise, when a concessionaire opposes the new rules of the general laws. Most likely the concessionaire will obey rules concerning workers safety or the protection of the environment, or at least, he will pretend that he is making his best efforts to carry out his activities within the prescribed rules. But rules which change the economic basis for his activities, he is bound to oppose, if he does not want to go out of business.

If an act only hits one enterprise, it is quite reasonable to suggest to characterize the rules as expropriative interventions. In that case the concessionaire may claim compensation, cf. below. But if an act applies to a number of enterprises, it is more difficult to characterize the intervention as expropriation. In that case, it appears that the protection of the concessionaire may only be found in the law of contract, and he thus has to claim that his concession includes an agreement concerning certain issues, for instance the economic

---

[73] The most recent agreement in this relation was signed by the concessionaire, A.P. Moeller, and the Minister of Energy on 19. May 1981

[74] However, in the Aminoil award, section 90, 21 ILM 976 (1982), the arbitration tribunal decided to disregard the Kuwait government's references to similar constitutional principles and jus cogens. See Tschanz (1984), supra, at pg. 275.

matters[75]. Even if the concession included agreements in relation to issues, which at any time might become subject to legislative changes, for instance concerning the improvement of labour work conditions, the concessional stipulations in this field could entail public party liability to pay economic compensation under the concession for any costs invoked by the changes in legislation.

11.3.7.6. Expropriation.

Art. 73 of the Danish constitution lays down that "the right to property is inviolable. No one may be forced to surrender his property unless the common interest so requires. It may only take place in pursuance of an act and against full compensation". Specific limited rights, as for instance those granted under a concession, are regarded as property, and can, consequently, be expropriated against compensation[76]. General legislative regulations are not regarded as expropriations, even in the case where they in practice apply to a limited number of persons or companies[77].

11.4. CONCLUSIONS IN RELATION TO THE SCANDINAVIAN CONCESSION CONCEPT

It is important to notice here that it has been common in Scandinavia to reach exploitation agreements between public administration and private companies. Afterwards the codified concessions in favour of the private parties have been enacted by statute. This fact is obvious due to the chronological phases of negotiation. The fact is also revealed through the fact that several of the concessional arrangements have been modified subsequently by agreements between the States and the concessionaires, without these amendments being enacted by statute.

---

[75] This was to some degree the issue at stake in the Aminoil award, supra.

[76] Cf. Andersen (1965), pg. 81.

[77] Cf. Soerensen, Max: "Statsforfatningsret", 2. ed. by Peter Germer, Juristforbundets Forlag, Copenhagen (1973), pg. 402, and Germer, Peter (1989): "Statsforfatningsret II" Juristforbundets Forlag, Copenhagen (1989), pp. 106-112..

Legally, the concessions may thereby include underlying agreements with each of the private parties, and subsequent sovereign enactments with effect in relation to everybody else and in relation to pre-existing legislation. This jurisprudential cross-breed or legal bastard is known from other parts of the world as well[78]. The important point here to remember is that presumably, the subsequent enactment does not have any direct legal impact on the inter partes relationship.

The Scandinavian legal systems have at an early stage inherited many of their legal concepts from other legal systems on the European continent. As mentioned above, the Scandinavian languages have inherited the word "concession" from ancient Rome. But as shown above, a concession is no longer simply an act of sovereignty. Other examples of inherited concepts from the continent are the French concept of "contrat d'adhèsion" and the German "Muter" concept in the field of mining.

The question is then whether the North Sea oil adventure has led to the incorporation of Common Law features into Scandinavian law. Much of the used terminology is ostensibly taken from English, as for instance "royalty", "tender bidding" and so on. Also many of the practical procedures may be identical to British or American procedures. But when it comes to the features of the concession documents and the legal classification of these, it is hard to see direct similarities with the present systems of the United States, United Kingdom and Commonwealth.

The systems in Scandinavia involve bidding rounds, competition and a high degree of administrative organization like in the United States and in United Kingdom. But the basic approaches of the legal systems to the exploitation of valuable minerals are different. Also the internal positions of strength of the multinational concessionaires and of the sovereign statehood are different. Stronger or weaker at different facets of power.

Now, the legislative framework in Scandinavia is strong and comprehensive unlike the situation in most Middle East countries. But it is tempting to draw parallels with the legal situation of the old concessions in the Middle East; namely that two independent parties, a foreign company and a State, draw up an agreement which fits their purposes, and in so

---

[78] See McGill, Stuart (1984): "Issues for governments when formulating Mineral Agreements" 8 Materials and Society 115 (1984), at pg. 116.

doing develop a new type of contract or concession[79].

Over time circumstances change, and like any other long-term relational contract, the parties have to modify the agreement, if it is to survive. From the concessionaire's angle of view, the description of the situation has been phrased: "The signing of a concession agreement is only the invitation to the ball. The foreign investor may feel at times that he has entered into a contract to make concessions, rather than a concession contract".[80]

Traditionally, the Scandinavian courts abstain from making general comments with broad impacts on future litigation. The courts try to avoid taking over the role of the legislator. In the field of concession law, however, the courts may be forced to express more general opinions on the issue of the legal classification of these arrangements. No longer a simple act of sovereignty, oil concessions are somewhere in the grey area between public law and private law. The terminology used by the Norwegian Supreme Court indicates that a concession is, broadly speaking, a private law arrangement between a private party and a public party, which might be labelled "concession agreement", or just "concession" in its modern sense..

Following this line of thinking, it might be worth considering that the next concession conflict arising in Denmark or Norway might stem from one of the newer model licenses. These were to a higher degree designed exclusively by the public authorities, and the question is thus whether these licenses are standard permits or contracts in the form of "contrat d'adhèsion". It may be added that in Scandinavian law, a "contrat d'adhèsion" is interpreted against the party, who designed it. This is a result of the principle "in dubio contro stipulatorem".[81]

This is a point close to the core in the body of essence of the need to make a

---

[79] This is in line with the opinion of Waelde, who has expressed that oil development agreements in the 1970's have been greatly influenced by the contract paradigm developed for the low cost oil fields in mainly middle Eastern OPEC countries; See Waelde, Thomas (1987): "Investment policies in the international petroleum industry: Responses to the current crisis" in Khan (ed): "Petroleum Resources and Development" Belhaven Press, London (1987) at pg. 37.

[80] See Smith and Wells (1976): "Conflict Avoidance in Concession Agreements" 17 Harv.Int.L.J. 51 (1976), at pg. 53 with references.

[81] See Gomard, Bernhard (1988): "Almindelig Kontraktsret" Juristforbundet, Copenhagen (1988), at pg. 191.

qualification of the concession arrangements. Because, in administrative law the principle of "in dubio contro stipulatorem" does not exist. Instead, the principle of interpretation on basis of the preparatory works, the motives of the public party, prevails.

12. THE DEVELOPMENT OF GREENLANDIC CONCESSIONS

This chapter aims to describe the legal conditions for the exploitation of non-living resources in Greenland prior to the establishment of the legal regimes applying to the activities carried out at present.

The concession relating to the Greenex lead and zinc mine in Marmorilik[1] and the concession relating to the hydrocarbon activities in Jameson Land[2] are analyzed in detail in the following chapter. This chapter thus merely provides a background survey of the development of exploitation and law until the adoption of the 1965-Mineral Resources Act[3] and the issuance of the Greenex concession.

12.1. UNTIL THE ISSUANCE OF THE 1935-ROYAL DECREE[4]

The exploitation of minerals in Greenland began in the middle of the 19th century under the auspices of public administration. In 1851 the authorities opened the first copper mine near Julianehaab, and the site was named King Frederik the VII's Copper Mine. However, after the extraction of 13 tonnes of copper ore and small quantities of silver, the mine was exhausted. Another mine was opened in the Julianehaab area, near Amitsoq, in 1915. It was a graphite mine, which was active until 1925.

In 1924 the State opened a coal quarry at K'utdligssat at the Disko island. The quarry remained open until 1972, when the quarry and the minetown K'utdligssat were closed down, because the poor quality of the coal made the activity too unprofitable.

The first mineral in Greenland to be of major economic importance was cryolite.

---

[1] "Concession to explore and exploit certain mineral raw materials in an area near Umanak" of January 22nd 1971, M.f.G. file no. 1470-04-00.

[2] "Concession to explore for and exploit hydrocarbons in an area of Jameson Land in East Greenland" of December 6th 1984, M.f.G. file no. 1482-00-00.

[3] Act no. 166 of May 12th 1965, amended by Act no. 203 of May 21st 1969.

[4] Royal Decree no. 153 of April 27th 1935 concerning the exploitation of raw materials in the soil of Greenland.

Cryolite was exploited in Ivigtut for more than a century until the quarry was completely empty in 1988. A private company, the Cryolite Mine and Trading Company, was granted permission by the King to exploit cryolite in Greenland in the 1860's. The terms of the concession were amended and prolonged over time. Prior to the most recent concession, a concession of 2nd March 1914 provided the company with the right to continue the exploitation.

Until 1935, no legislation had regulated the exploitation of non-living resources in Greenland. The right to exploit minerals had mainly been used by the authorities to initiate governmental projects, and the few concessions to private parties had been issued as a mere result of or an exercise of the sovereignty of the King of Denmark. However, the dispute with Norway in the 30's concerning the sovereignty of East Greenland forced the authorities to consider the problem.

By means of a Royal Decree of April 27th 1935, the Danish sovereignty in relation to minerals in Greenland was asserted. The Royal Decree contained three articles, and stated in its first sentence that raw materials present in the soil of Greenland belonged to the Danish State. Exploration for minerals with technical devices was illegal without a permit from the Danish State, and the right to extract minerals was reserved to the State.

In the Decree, the King authorized the government to issue exclusive licenses for the exploration and exploitation of raw materials in the soil of Greenland. However, the contents of the licenses were not to be in contradiction to the legal principles relating to exploration and exploitation in Denmark, as laid down in Act no. 27 of February 19th 1932.

The Decree explicitly stressed that the rights of the State decribed in the Decree did not interfere with existing rights to exploit peat or coal for local use in Greenland.

12.2. THE CRYOLITE CONCESSION OF 1939[5]

The private company's success with the cryolite was of considerable economic interest to the government. In 1939, a new cryolite company "Kryolitselskabet Oeresund A/S" was

[5] Concession of November 24th 1939 for "the quarrying and shipping of cryolite from the site situated at Ivigtut", M.f.G. file no. K27-01-01.

established with the State as the major shareholder. After some negotiation, the old concession of March 2nd 1914 to the Cryolite Mine– and Trading Company was repealed, and the exclusive rights to quarry and to ship cryolite from Ivigtut were transferred to the new company Kryolitselskabet Oeresund A/S.

The new cryolite company has run the quarry until 1988 on the basis of the concession granted in 1939. Because the quarry was exhausted, the Danish government decided to sell the public shares in the company in the middle of the 80's. The company still exists as such, but now operates as an investment– and holding–company in relation to stock in other companies.

The scope and the content of the obligations and the rights provided by the concession is of interest to this discussion of the development of Greenlandic concessions. By the concession, art. 1, the company was granted the right to quarry and to ship cryolite from Ivigtut. Furthermore, art. 2 of the concession extended the rights to include the utilization of all other minerals or ores found in the same area around Ivigtut on the same concessional conditions.

The concession did not provide for the payment of fees or royalty. The direct public economic interest in the activities was limited to the ownership of shares in the concessionaire, and to the company taxation of the concessionaire, which was a registered company of Copenhagen.

The concession also entailed some indirect economic advantages for the state. The quarry provided work to Greenlandic and Danish labour, and the activities also provided for shipping facilities and a small hospital in that part of Greenland.

The conditions of these various accessory activities were regulated in the concession. Art. 3 laid down that Danish labour working in Ivigtut should not be treated in any manner less favourable than labour in similar enterprises in Denmark. Subject to the regulation of the authorities, the mining company was obliged to carry goods, mail and passengers, including government officials, on its ships between Denmark and Ivigtut. According to art. 8, the company was required to maintain a hospital with one doctor in Ivigtut; Moreover, this hospital was to be open to the local population against payment from the Ministry.

According to art. 9 – 11, the Ministry was to have one supervisor stationed at the site in Ivigtut; the mining company was required to provide this supervisor with all necessities for daily life in Ivigtut, and was to reimburse the State for his salary.

The final provisions of the concession laid down that subject to the control of the Danish courts, the Danish Prime Minister could declare the forfeiture of the concession in the event of bankruptcy of the concessionaire or if the cryolite site was misused. Other types of negligence or malpractice of a considerable degree could also cause forfeiture, if the company did not take the necessary precaution or steps to redress the problems.

Apart from these means of bringing the concession to an end, there was only one other alternative; namely, to empty the quarry, since the concession was not limited in time.

In relation to the termination of the concession in this manner, a final problem was that after the Danish government's sale of its shares in the cryolite company, new technology and slightly higher world market prices made it advantageous to keep the quarry running for three more years in order to utilize certain previously excavated minor deposits of cryolite ore with a lower grade of quality.

The sale of the shares at what was an unfavourable time caused quite some political controversy in Denmark. A public commission was established to look into the question of lack of information concerning the new exploitation possibilities from the board of directors to the Danish Parliament prior to the decision of the latter on the sale of the public shares.

In order to safeguard the status quo and to establish a more equitable arrangement with the purchasers of the government's shares, various proposals were advanced in parliament as well as in the press.

In this debate, the financial affairs spokesman of the largest Danish political party, which was not in government at the time, argued that the State should achieve a concession-agreement with the cryolite company, in order to secure some fees on the production of cryolite[6]. In other words the royalty terms were to be fixed by a supplementary agreement connected to the original concession of 1939.

It may be added, that the profit from the continued running of the quarry did not turn out to be as big as expected in the press, and the issue of supplementary fees was thus forgotten about.

---

[6] Mogens Camre, Social Democrate Party, for instance in the newspaper Jyllands-Posten, November 5th, 1986, Erhverv og Oekonomi, section 1. p.2.

12.3. THE NORTHERN MINING COMPANY LTD IN MESTERSVIG

The concession regulating the cryolite exploitation in Ivigtut was developed on the basis of old private exploitation privileges and subsequent negotiations. Already at the time of the issuance of the 1939 concession, it must have appeared old fashioned compared with the state of development of Scandinavian jurisprudence relating to concessions[7]. The regimes of subsequent concessions in Greenland were thus of a much more developed nature.

In the 1920's and 1930's the Danish State sponsored a number of scientific expeditions in Greenland with geological and geographical purposes. The expeditions were headed by the explorer, Dr. Lauge Koch.

Around 1930, these expeditions proved the presence of a deposit of lead and zinc ore at a place named Mestersvig south of King Oscar Fjord in the middle of East Greenland. The development of the site was, however, postponed by World War II.

By 1952 the matter had been considered thoroughly, and in December the King approved an Act of Parliament concerning the establishment of The Northern Mining Company Ltd[8].

According to articles 1 and 2 of the act, the purpose of the company was to explore for and exploit all metals, coal, oil and other minerals, except for cryolite and radioactive minerals situated between the sea and the inland ice in East Greenland bordered to the south and to the north by the 70* and the 74*30 parallels. The rules applying to the exploitation were to be provided in a 50 year concession issued by Royal Decree.

Pursuant to art. 3 of the act, the company was established with a capital of DKK. 15 million. The State held 27.5 percent of the shares, and according to art. 3, a minimum of 55 percent of the shares was to be in the hands of the Danish authorities, Danish companies or citizens. The shares in Danish hands were non-transferable to foreigners without the consent of the Prime Minister, who also had to approve of the statutes and any amendments

---

[7] See for instance the theories of T. Guldberg: "Internationale Koncessioner. Et internationalt finansretligt problem", (1944) Nordisk Tidsskrift for International Ret, p. 42ff.

[8] Lov om "Nordisk Mineselskab A/S", Act no. 431 of December 17th 1952. The preparatory works of parliament may be found in Rigsdagstidende 1952-1953.

of these.

In relation to the financial issues, articles 4 – 5 provided for total exemption from State income taxes, local income taxes, as well as exception from value added tax and duty on equipment used in Greenland. Furthermore, the company pursuant to art. 13 was exempted from the duty to pay fees and stamps relating to company documents concerning the stock capital of the company.

However, art. 4, section 2, stipulated that the company was to pay an income fee to the State, and this fee was to be determined in the concession document.

The concession document was prepared in connection with the Act concerning The Northern Mining Company Ltd. On 19. December 1952 the King gave his consent to the issuance of a "Statutory Order concerning an Exclusive License for Exploration and Exploitation of Raw Materials in part of East Greenland"[9].

The concession document included a preamble and 24 articles of detailed regulation.

The company undertook the obligation to carry out exploration work immediately and to initiate commercial exploitation within ten years. Furthermore, the company undertook to continue the exploration for other valuable minerals, when the discovered site at Mestersvig had been developed, cf. art. 2 in the concession.

Various State financed expeditions to Mestersvig had led to the erection of various buildings and installations, and for these, the company paid DKK 1.5 million according to art. 16 of the concession.

Instead of taxes and duty, the company was to pay an income fee calculated on the basis of company profits. The fee was to be calculated annually on the basis of the net income with a deduction of carried-on losses of previous years and a five percent capital interest to the shareholders. The fee amounted to 15 percent of the calculated, reduced profit. When the total net profit over the years had reached a sum equivalent to the share capital, the income fee percentage was to be raised to 45 percent according to art. 15.

By the concession, the Danish State granted a 50 year exclusive mineral exploitation right concerning the area in question. In order to facilitate the work of the company, the

---

[9] Bekendtgoerelse om eneretsbevilling til efterforskning og udvinding af raastoffer i en del af Oestgroenland, statutory order no. 451 of December 31st 1952, cf. Groenlandsdepartementet, file no. S.k. journal nr. 1132/52. The concession was amended in 1962 due to discoveries of other minerals, see section 12.4 below.

administrative authorities were presupposed to be helpful in relation to export licenses, import licenses and currency exchange control. According to art. 8 in the Act and art. 12 in the concession, the Ministry of Public Works was to build and run an airport at Mestersvig. Once commercial exploitation had been initiated, the company would pay a fee for its use of these facilities.

The concession also included requirements concerning information to the public authorities, supervision, as well as concerning the company's proper care of its employees by means of housing, doctors, personal necessities, travel etc. The concession included most favoured clauses in relation to Danish products and Danish labour and technicians.

Also included in the concession were detailed rules on arbitration in various respects and concerning options and consequences in relation to termination or expiry of the concession. Furthermore, the company had the right to enter into sub-concessions with third parties subject to the approbation of the State; as well as sub-contracts concerning its own activities, without any interference from the State.

In relation to existing rights in the concession area, art. 3 of the concession stated that the company could take into use any area necessary in connection with the work. Outside these areas in use, but within the entire concession area, habitual fishing, hunting and lodging was not to be affected by the concessional rights.

However, if required by the activities of the concessionaire, the Prime Minister was entitled to take decision on expropriation of buildings or installations belonging to third parties within the concession area in pursuance of art. 7 of the Act concerning The Northern Mining Company Ltd.

The lead mine in Mestersvig exploited ore commercially since 1956. The deposit was exhausted in 1963, and the mine consequently closed down. According to an Act of 1954[10], the State had granted the company a supplementary loan of DKK 12.5 million. After the closure of the mine, the responsible loan capital from the State was repaid, and the American company Atlantic Richfield Company (ARCO) took over the majority of the share capital with the accept of the authorities. The State kept some 15% of the shares only.

In 1984, The Northern Mining Company Ltd. gave up its concession. This step was

---

[10] No. 161 of May 17th 1954.

part of an agreement concerning the development of hydrocarbon activities within the same area. The agreement was made following negotiations between the State, the Northern Mining Company and the American parent company Arco. The State and Arco agreed that the development of hydrocarbon activities could be more suitably carried out by Arco through another fully owned Danish subsidiary company on the basis of a modern concession rather than on the basis of the 1952 concession.

Accordingly, Arco was granted the Jameson Land Concession discussed in chapter 13 below, and at the same time, the 1952 concession to The Northern Mining Company was terminated. Following a proposal from the Minister for Greenland[11], the Danish parliament in 1984 decided to repeal the Act concerning the Northern Mining Company Ltd, and decided to transfer the title to the State's shares to a joint Danish/Greenlandic public company[12] representing the public interest in the aforementioned hydrocarbon venture.

12.4. THE MOLYBDENUM CONCESSION OF THE ARCTIC MINING COMPANY LTD

In the same area of East Greenland, in the Werner Mountains, relatively near the lead mine in Mestersvig, quite a huge deposit of molybdenum ore had been discovered. However, the deposit is situated in a remote area and is of relatively low grade quality.

In 1962 the Arctic Mining Company Ltd obtained an exclusive license to explore and to exploit the molybdenum deposit for 50 years. However, a condition was laid down that commercial exploitation should be initiated within 10 years. In 1975, this condition had not been fulfilled, and the concession was therefore cancelled.

The Arctic Mining Company Ltd was established in pursuance of an act of parliament in the same manner as The Northern Mining Company Ltd[13]. The shares of the Arctic Mining Company were owned fifty-fifty by the Northern Mining Company and by the American company AMAX Exploration Incorporated. Later, however, all the shares were

---

[11] Lovforslag nr. 52 til lov om ophaevelse af lov om Nordisk Mineselskab A/S, November 7th, 1984, file no. M.f.G. nr. 1525-01-12.

[12] Nunaoil A/S, cf. Act no. 595 of December 12th 1984.

[13] Established by Act no. 378 of December 20th 1961 concerning Arktisk Minekompagni A/S.

taken over by the Northern Mining Company.

Following the same procedure as in relation to the concession to the Northern Mining Company, the Arctic Mining Company by Royal Decree was granted an "Exclusive license for exploration and exploitation of raw materials in the Werner Mountains in East Greenland"[14]

The Werner Mountains are situated in the middle of the concession area granted to the Northern Mining Company. Since the Northern Mining Company did not want to exploit the molybdenum at sole risk and thus was involved in the Arctic Mining Company, it was only a minor legal matter to amend the old concession to provide space, literally, for the concession to the Arctic Mining Company[15]. The concession area moved from one concession to another comprised only the Werner Mountains, delimited by minutes of latitudes and longitudes. Furthermore, by this amendment, the State accepted that the Arctic Mining Company would take over the Northern Mining Company's obligation to continue new exploration.

The wording of the concession granted to the Arctic Mining Company was almost identical to the wording of the concession granted to the Northern Mining Company ten years earlier. The new concession included all metals and minerals, except cryolite and radioactive substances, in the area of Werner Mountains, and specifically referred to the Molybdenum deposit. The rules in force concerning importation licenses had been simplified over the years. Thus, the concession did not need provisions relating to this matter.

Apart from these minor issues, the Molybdenum concession to the Arctic Mining Company did not contribute to the general development of the concession concept. Neither did, for that matter, the concessional arrangement contribute to the supply of molybdenum to the world market.

12.5. CONCLUDING REMARKS

---

[14] Statutory Order no. 124 of April 3rd 1962; "Eneretsbevilling til efterforskning og udvinding af raastoffer i Werner Bjerge i Oestgroenland".

[15] Statutory Order no. 125 of April 3rd 1962 concerning an amendment of the concession of 1952.

The concessional arrangements with the Arctic Mining Company and the Northern Mining Company may look wholly statutory in their nature, because of the enactment of the concession documents by Royal Decree. However, the decrees might be seen as the results of prior negotiations, and in the inter partes relationship they are only codifications of will powers. One may suggest that the enactments are directed to everybody else in order to declare the superiority of the concessions in relation to other conflicting legislative Acts[16].

Possibly, a few traces from the concessional regime applying to the Northern Mining Company Ltd may be found in the concession granted to one of the parent companies, ARCO, in 1984 for the exploration and exploitation of hydrocarbons within the same area in East Greenland. This concession granted to ARCO is dealt with in detail in the following chapter.

Before ARCO obtained its concession, the authorities had gained experience from two other projects. One project was the unsuccessful offshore oil exploration in the late seventies, described in the previous chapter on offshore exploration. The other project was the successful development of a lead and zinc mine in Marmorilik in West Greenland on the basis of a concession granted to Greenex. The ARCO Jameson Land Concession and the Greenex Concession were in the late 80's the only exploitation concessions in force in Greenland. However, both concessions are surrendered or suspended in 1991.

The latter two concessions are discussed in detail in the following chapter. Hopefully, this chapter has shown the development of the concessional regime during the middle of this century, and has thus provided some understanding of the administrative experiences which the ensuing concessions were based on.

---

[16] About this enactment "cross-breed", see section 11.4. above.

13. ANALYSIS OF RECENT CONCESSIONS

The aim of this chapter is to show some details of the legal mechanics of the two relatively new Greenlandic concessions, and thereby to demonstrate how the standpoints of the law and the governmental regime are expressed in documents labelled concessions. From this the implicit legal character of the arrangements may be determined.

At a more specific level, the aim of the chapter is also to demonstrate how the State in its concessional arrangements with a concessionaire makes a note of the State's manifold objectives apart from securing public revenue: To protect the environment, the labour force, the infrastructure and the existing rights of citizens.

At a general level, the chapter also serves the task of providing information concerning details on the conditions of the possibilities offered by Greenland to interested mining companies.

13.1. PRESENTATION OF THE TWO CONCESSIONS

The eldest concession analyzed in this chapter is a "Concession to explore and exploit certain mineral raw materials in an area near Umanak" of January 22nd 1971[1]. The concession is here after called the Greenex concession, because the concession was granted to a company of the name Greenex A/S of Copenhagen.

Greenex A/S was a Danish subsidiary of the Canadian company Vestgron Mines Ltd, which for its part was dominated by Cominco Ltd, which held 62% of the shares in Vestgron Mines Ltd. In 1986, however, the shares in Greenex A/S were transferred to the Swedish mining company Boliden AB.

The purpose of the Greenex concession was the exploitation of a deposit of leadgalena and zincblende at Marmorilik near Umanak in the middle of West Greenland. In the beginning of the 1970's, the combined lead and zinc mine, named "The Black Angel", was developed.

---

[1] M.f.G. file no. 1470-04-00

Economically, the mining adventure went well in the beginning[2]. During the first three years of production (1974–1976), the company had an annual yield of DKK 80–90 million. Then in 1977 – 1978, the world market price for zinc dropped from 800 US Dollars per tonnes to 500 US Dollars per tonnes, and the yield thus dropped to DKK 33 million in 1977 and nothing in 1978.

By the middle of 1977, however, the company had regained all of the originally invested capital of DKK 333 million. Until 1978, the total public revenue from the mine by means of area fees, company shareholder divided tax and local income taxes had amounted to DKK 40 million. Just as the company was about to start to pay a 45% royalty according to the concession, the world market prices dropped.

Mining continued with economic losses during the beginning of the 1980's, and therefore, the owners of Greenex A/S on December 13th 1985 reached an agreement with the Minister for Greenland concerning a moratorium and depreciation of share capital, combined with certain environmental obligations in the event of closure of the mine[3]. According to the agreement, the owners of Greenex A/S in April 1986 decided to close the mine; the Ministry had the option of taking over the shares in Greenex for their liquidation value[4]. At this point the shares were transferred to the Swedish mining company Boliden AB. In recent years, the world market prices again have allowed for profits and royalties in the region of DKK 100 million. However, the deposit was exhausted in 1990, and the mine is closing down.

The second concession to be analyzed in this chapter is the "Concession to explore for and exploit hydrocarbons in an area of Jameson Land in East Greenland" of December 6th 1984[5], here after called the Jameson Land concession. As mentioned in chapter 12.3. above, the Jameson Land concession succeeded an older mining concession in the same

---

[2] According to Gert Vigh: "Generel orientering/ statusrapport vedroerende raastoffer i Groenland", Julianehaabkonferencen 1978.

[3] M.f.G. file no. 1480–00–00 JBC/vj/0/55.

[4] See Ministry for Greenland press release of April 11th 1986.

[5] M.f.G. file no. 1482–00–00.

area, held by the Northern Mining Company Ltd, which to some degree is a subsidiary company of the American company Atlantic Richfield Company (Arco). Arco is the driving private force among the concessionaires of the Jameson Land concession.

Arco held for a couple of years the right to carry out prospecting for oil. The concession was granted following the discovery in 1984 of presence of hydrocarbons in Jameson Land.

The concession was granted to a concessionaire, in which A/S Arco Greenland (Petroleum Exploration and Production), a fully owned subsidiary of the American Arco, participated with 63.75 %, and a Danish–Greenlandic public company, Nunaoil A/S[6], participated with 25 %. The remaining 11.25 % were filled in by the Arctic Mining Company Ltd, which was controlled indirectly by the State and Arco jointly[7]. A/S Arco Greenland was appointed operator in the project[8].

In 1985, a landing strip and a supply base was built at Constable Pynt in Jameson Land, and 300 kilometers of seismic surveys were carried out. The same year, crude oil prices dropped considerably, and therefore Arco decided to suspend the exploration activities in the area with effect from March 1986[9]. However, the supply base and the landing strip were still maintained and in operation by a stationary crew. The Ministry for Greenland could have tried to revoke the concession, claiming the suspension was a breach of contract. Arco proposed to resume the exploration project on condition of further relief in the concessionaire's economic burdens, and on June 4th 1987 the parties signed an addendum to the concession; primarily concerning the concessionaire's exploration obligations within the first six year period of the entire concession.

For the purpose of comparisons of legal practices, this chapter also include numerous references to and quotations from the Danish Ministry of Energy's "Model Licence for

---

[6] Established pursuant to Act no. 595 of December 12th 1984.

[7] About the Arctic Mining Company Ltd, see chapter 12.4.

[8] On October 18th 1988, an addendum to the concession was signed. By the addendum the company Agip Greenland A/S took over part of the private share of participation under the concession.

9 cf. Press release of February 25th 1986 from the Ministry for Greenland

for exploration for and production of Hydrocarbons - 2. round", hereafter referred to as the Danish license. The license, issued the April 1985 is used as a basis

Not only does the labour force need to be trained in order to understand the procedures of the concessionaire's activities; the basis for the exploration for and exploitation of hydrocarbons in a number of geographical blocks allocated 1986–87 concerning the Danish subsoil and especially the Danish sector of the North Sea[10].

Here it may be mentioned that all of the three above mentioned concessions and licenses are extensive documents comprising 30 – 40 articles and a number of appendices and supporting documents. However, only an analysis of the main frames of rights and obligations provided in the concession documents fall within the scope of this chapter.

Here it has to be recalled that the contexts of the three concessional regimes are slightly different. The Danish License is a document which is part of a bidding competition for exploration rights in areas of the North Sea, where a number of oilfields were developed at the time of the competition. However, like any other offshore operation, the exploration costs and the initial development costs are quite substantial compared to land based activities relating to hard minerals.

The context of the Jameson Land concession is different because the exploration activities were to be carried out onshore in areas without certain presence of commercially exploitable hydrocarbons. Furthermore, the Jameson Land concession was not part of a bidding competition, but was the result of extensive negotiations with a private company, which to some degree had experiences beforehand with the contextual conditions.

The Greenex concession is 15 years older than the two others and concerns the extraction of hard minerals. The Greenex concession did not involve the same risks as the Jameson Land hydrocarbon concession, because the presence of the minerals was more or less known. However, the physical environment and the initial development costs under the two Greenlandic concessions are comparable.

Contextual differences apart, the concession documents have a high number of resemblances. All contracts and all permits of any kind typically include rights and obligations conferred on both parties. A contract on sale of goods would include a

---

[10] Published in the reports of the Minister of Energy; "Energiministerens redegoerelse til folketingets energipolitiske udvalg i henhold til undergrundsloven. 2. udbudsrunde", Energiministeriet 1985. About the first round of allocations, see Roenne & Budtz (1984): "Den retlige regulering af efterforskning og indvinding af olie og gas fra Danmarks undergrund" Ugeskrift for Retsvaesen, 1984 B, pg. 369, with references.

description of the goods and a description of the payment. A permit to carry out a certain activity would describe the activity and would also describe certain conditions to be respected. Furthermore, the contract and the permit both would include a description of the circumstances and certain rules governing the transaction.

The rest of this chapter is structured in the same manner. First there follows a survey of the State's contributions to the agreements (section 13.2), and then an overview of the direct economic counter-performances from the concessionaires (section 13.3) and the additional counter-performances from the concessionaires (section 13.4). Further details concerning the relationship between the State and the concessionaires are included in section 13.5. Last the rules to be used in case of conflict are analyzed in section 13.6, the "lawyer's law" clauses.

13.2. THE STATE'S CONTRIBUTIONS TO THE AGREEMENTS

By the expression contributions from the State to the agreement is also meant the rights conferred on the private party by the agreement[11].

13.2.1. The content of the right.

The preamble of the Jameson Land concession states that the concessionaire is granted the sole and exclusive right to explore for hydrocarbons in a defined area of Jameson Land, as well as the sole and exclusive right to explore for and exploit hydrocarbons in areas to be delimited. This is repeated in section 3, which refers to the delimitation provided by specifications in section 2.

An exploitation concession issued on the basis of the Jameson Land concession entitles the concessionaire to exploit the hydrocarbon deposit in question and to explore for and exploit other hydrocarbon deposits which may be present within the exploitation concession area, including natural gas.

In section 7.04 of the Jameson Land concession it is laid down that if the concessionaire has fulfilled the exploration obligations, then the concessionaire is entitled to have delimited an area within which the concessionaire has the sole and exclusive right to

---

[11] Cf. chapter 9.3. above.

exploit hydrocarbons under the terms of the concession.

In the sample of an exploitation concession attached to the Jameson Land concession, it is laid down that the Ministry delimits an area in which the concessionaire has the sole and exclusive right to explore for and exploit hydrocarbons under the terms of the Jameson Land concession. Furthermore, the delimitation of the exploitation concession area is stated in one attached exhibit, and a map of the area is attached as another exhibit.

It might be added that section 3.03 of the Jameson Land concession grants the concessionaire the right within the concession areas to carry out the construction of the necessary facilities and installations and to carry out other necessary operations in accordance with articles 16 and 21 in the Act on Mineral Resources in Greenland of 1978. These articles are concerned with the use of land[12].

Turning to the Greenex concession, one may mention that in section 1 it is laid down that the concession grants the sole and exclusive right to explore into and to exploit deposits of metals and other mineral raw materials: However, it does not include oil, gas and other hydrocarbons regardless of whether they exist in a solid, fluid or gaseous state, nor cryolite and minerals containing uranium, thorium, and other radioactive substances.

Within the concession area the concessionaire may use the necessary areas and take possession of stone, gravel and such materials as required for the erection of buildings, for working and housing facilities, machinery, harbour installations, airfields, roads, local tracks, etc. as well as for the construction of a dam from the foot of the "Black Angel", which is the name of the mine, to the other side of the firth, and to undertake any and all landscaping that may be found necessary for exploration and exploitation by the concessionaire. As part of his exploration and exploitation operations the concessionaire shall have the right to utilize such streams, lakes, and other sources of water as exist in the concession area, provided that the exercise of such rights respects older existing rights.

13.2.2. The extent of the right.

In relation to the problem of delimitation of the concerned area, section 2 of the Greenex concession lays down that the concession area comprises the contiguous, rectangular pieces of area shown on an attached map and is limited by the co-ordinates

---

[12] However, cf. chapter 8.3. above and 13.4.7. below.

passing through the positions shown in an attached schedule. At the request of the Ministry for Greenland the concessionaire shall make an exact determination of the position of the concession area and mark the boundary lines thus ascertained.

Returning to the Jameson Land concession, section 2 delimits the overall exploration concession area within which exploitation concessions are to be granted. It lays down that the concession covers the on-shore area in Jameson Land defined in the section. Technically the boundary between the on-shore area and the adjoining off-shore area is determined at the highest water level. The delimitation lines of the area are drawn as lines between points fixed by latitudes and longitudes.

These rules of the Jameson Land concession also apply to exploitation concessions within the area. It is laid down that exploitation concession areas will be delimited by geographic co-ordinates. The individual area will comprise the area, with the addition of up to twenty per cent, in which according to the available results from drillings, geological and geophysical surveys, a commercially exploitable deposit of hydrocarbons has been demonstrated.

According to section 7.03 of the Jameson Land concession, the concessionaire upon discovery of a commercially exploitable deposit is obliged to submit a request for issuance of an exploitation concession, and the request is to be accompanied by a proposal for delimitation of the exploitation concession area based on the hydrocarbon deposit or hydrocarbon deposits in question.

The above described rules on technical delimitation of the concession area are comparable to the rules of the Danish system. According to section 2 of the Danish License, the license shall apply to the area indicated on an attached map, with the attendant corner coordinates and blocks shown in Appendix 1 to the license. The coordinate and block system used are indicated on a map which is deposited with the Ministry of Energy.

In section 5 of the Danish License is stated that the Minister of Energy shall undertake the delimitation of the area or areas with respect to which the license is extended for the purpose of production. The delimitation is to be indicated by geographical coordinates and by depths. The area thus delimited includes the deposit to the extent that has been substantiated by the licensee.

13.2.3. Procedural remarks.

In relation to Greenland, it here may be noted that the State upheld the three stage procedure, which was instituted by the 1978 Mineral Resources Act; Prospecting license, exploration concession and exploitation concession. Prior to the issuance of the Greenex concession and the Jameson Land concession some prospecting had taken place. When it then had come to the investment of substantive amounts of money, the perspectives of exploitation had to be included under the exploration concessions in return for the burdens undertaken by the private party. However, the State maintained the three stage procedure, because subsequent to the issuance of the exploration and exploitation concessions, the State was supposed to issue an additional exploitation concession before production could start. The same system applied to the offshore explorations in the late 70's, and the problem was considered in the preparatory work of the concessions[13].

The possibility for the State to render the start of exploitation activities was a result of the legal framework. Politically it was later concluded that this lack of certainty for the mining companies concerning the production rights made the entire concession system insufficiently attractive. Thus an amendment of legislation was recommended by a working group[14], and the main rule has now become a two stage procedure, as described in chapter 9.

13.2.4. Concluding remarks.

One may conclude, that in general the rights conferred on the private party by the concessions are rather simple to describe: In the entire concession area, the concessionaire may explore for any type of mineral deposit covered by the concession. If the concessionaire fulfils his exploratory obligations, he has the right to initiate production, however, subject to the approval of the State. The exploitation areas in which the concessionaire may exercise his exploitation rights are precisely delimited within the entire exploration area on the basis of maps.

It is difficult to state that the State has sold something to the concessionaire. In

---

[13] Cf. chapter 9.1. and chapter 10.4.

[14] See Raastofforvaltningen for Groenland (1990): "Rapport fra Strategigruppen" Mineral Resources Administration, May 1990, Copenhagen, at pg. 8.

particular the doubt is related to the character of the transferred object. Possibly one could find parallels to fishing quotas, hunting rights or franchise rights. One may suggest that the State's contribution is merely a provision of a right to carry out certain activities, which the State for some reason does not want to undertake itself. The State's contribution to the arrangement also includes a promise not to give away the same right to other persons.

The concession documents do not touch upon the subject of the title to the potential discoveries of oil or hard minerals. But it follows from the nature of concessions that the oil and the minerals produced belong to the concessionaires. The concessionaires' title to the products implicitly follow from the fact that the State retains the preferential right to purchase the products, cf. below in section 13.4. It is difficult to see on the basis of the concession documents whether the title passes to the concessionaires by reason of the discovery of the exploitable deposit or by means of shipping the products from the area of extraction. The moment of transfer is not terribly interesting in the inter partes relationship, but the moment is probably closer to the time of discovery than to the time of shipping. Otherwise the disputes around in the world concerning expropriation of undeveloped oilfields would not have occurred.

However, in general the rather strict and clear content of the right and the promise is important to the concessionaire given the high economic risks and payments.

13.3. THE DIRECT ECONOMIC COUNTER-PERFORMANCES FROM THE CONCESSIONAIRES

Seen from the State's perspective the start of exploration and exploitation is of importance to the national economy, because it affects the trade balance and employment etc. In the initial phase, it is particularly beneficial to the national economy if the concessionaire is a foreign company investing foreign capital in national labour and machinery. It is obviously less beneficial if a national concessionaire invests in foreign labour and imported equipment.

Such thoughts are, however, of limited interest to the concessionaire. The private corporation is interested in expansion and ensuring a high, certain return of the resources invested in the project. This section is thus an attempt to look at the economic side of the concession from the concessionaire's perspective. It is a survey of the remunerations from

the private party to the State for the rights and promises described above, as well as an illustration of the economic risks involved.

13.3.1. Initial investment obligations[15].

Under a concession, a concessionaire typically undertakes certain initial investment obligations.

Section 6.08 of the Jameson Land concession lays down the minimum expenses for the fulfilment of work obligations in connection with exploration operations. The minimum expenses in the years 1–6 are stipulated as follows in december 1983 prices:

- seismic investigations : 29,00 mill. USD
- drilling mobilization/de–mobilization : 11,50 mill. USD
- exploratory well no. 1 : 10,25 mill. USD
- exploratory well no. 2 : 10,25 mill. USD

The following years the annual obligations of investment amount to an average of 15 million USD. The work obligations are regulated in accordance with the index for the U.S. Gross National Product Deflator. The work obligations consist exclusively of exploratory wells, and do not include expenses concerning appraisal wells, delimitation wells and production wells and expenses concerning construction of production facilities and installations.

If the work obligations stipulated have not been fulfilled then the concessionaire shall according to the Ministry's request pay an amount to the Ministry equivalent to the difference for each of the work obligations for which the stipulated minimum exploration expenses exceed the amounts actually spent. The difference is calculated separately for the seismic investigations of each period and separately for each exploratory well.

The investment scheme of the Greenex concession is not quite as regulatory as the Jameson Land concession. According to section 6 of the Greenex concession, the concessionaire shall expend by way of exploration expenditure at least DKK 144 annually per hectare plane surface area of the concession area. This obligation to expend an annual minimum amount terminates on the date when the concessionaire commences the mine development.

---

[15] Cf. chapter 9.4.3. and 9.5.1. above.

The Danish License does not include similar explicit provisions on investment obligations. This might be explained by the undertaking of specific work obligations according to a work scheme. Furthermore, section 32 of the Danish License lays down that in order to ensure performance by the licensee of all of its obligations under the license including the initial work programme, it shall within a period of 30 days from the granting of the license provide security in an amount and of a kind, possibly in the form of a parent company guaranty, acceptable to the Minister of Energy.

13.3.2. Area fees[16].

In the exploratory phase, the concessionaires must pay certain area fees to the state as remuneration for the exploration rights.

The Jameson Land concession states in section 17 that in the years 1–12 of the exploration period the concessionaire shall pay a fee of eight million DKK per year. The fee will apply regardless of the size of the concession area. The fee will be adjusted from September 1984 to September in the actual year on the basis of the Danish Department of Statistic's Consumer Price Index for Denmark (Danmarks Statistiks forbrugerprisindex for Danmark). The fee must be paid to the Ministry not later than December 31 for that part of the year in which the concession has been in force.

As regards exploitation concessions under the Jameson Land concession, section 17 of the concession states that for each exploitation concession, the concessionaire shall pay a fee of DKK one million per year.

Similarly, pursuant to section 26 of the Greenex concession, the concessionaire shall pay to the Ministry for Greenland an annual charge at the rate of 20 DKK per hectare plane surface area of the concession area. The charge is adjusted on the basis of the cost–of–-living index in Denmark, according to the Calculation of an Adjustment Cost–of–Living Index Act, No. 83 of 16th March 1963, as amended. However, from the date on which the computation of tax or royalty is initiated, which is when the investment is regained, any amount which is paid annually by way of area fee, is fully deductible in the tax payable.

The fee system of the Danish License is much simpler. In pursuance of section 7 of the Danish License, the licensee shall pay a one off fee of DKK 1.000.000 for the license.

---

[16] Cf. chapter 9.5.3. above.

13.3.3. Value added taxes, duties and tariffs.

Various value added taxes, duties and tariffs related to the sale of goods shall not cause hindrances to the start of exploration activities[17].

Section 3.09 of the Jameson Land concession provides that to the extent that international obligations in force from time to time do not prevent this, the concessionaire is exempted from tariffs and other duties on materials imported into Greenland for use in the operations. The authorities have the power to provide for such tax reliefs etc. pursuant to art. 20, par. 3, of the 1978-Mineral Resources Act and a similar provision in its predecessor. Thereby this matter at the general level of law is outside the application of the ordinary tax regime. In the 1991 Mineral Resources Act this statutory power is found in art. 8, par. 3.

In accordance with the Danish constitution, it is laid down in section 43.01 of the Jameson Land concession, that the Jameson Land concession is subject to the laws of Denmark and Greenland in force at any time, including EEC regulations in force. Accordingly, the Jameson Land concession shall not restrict the Home Rule authorities' and the Danish State's general right to levy taxes. It may here be added that a similar constitutional reminder is included in section 39 of the Danish License.

The concessionaire in the Jameson Land concession is thus subject to ordinary Danish/ Greenlandic company taxation of the outcome. Besides income taxation, the Jameson Land concession concessionaire is obliged to pay royalty.

The system of the Greenex concession is different. Pursuant to section 25 of the Greenex concession, the concessionaire is exempted from paying tax on earnings derived from the mining operations. This is an exemption from ordinary company income taxation. Moreover, the concessionaire is exempted from paying customs duties and other charges on machinery, instruments, other operational equipment, and materials imported into Greenland for the purposes of the mining enterprise.

13.3.4. Royalty[18].

---

[17] Cf. chapter 9.5.5. above.

[18] Cf. chapter 9.5.4. above.

The economic remuneration to the State is provided for in section 27 of the Greenex concession, which provides that the concessionaire shall pay to the Ministry for Greenland an annual royalty at the rate of 45% on the profit of the mining enterprise (and therefore it is not royalty, but tax). The tax may be reduced by Withhold Dividend Tax concerning foreign shareholders etc. The computation of the tax takes place from the date the invested capital has been regained.

In relation to the calculation of the profit of the enterprise, any activity carried out by the concessionaire for the purpose of transportation from the concession area, additional processing of concentrates of ore outside the concession area or sale at the subsequent commercial level shall not be deemed to form part of the mining enterprise.

According to section 28 of the Greenex concession, the profit of the mining enterprise on the basis of which the tax is computed must be made up – provided that nothing to the contrary has been stipulated in the Greenex concession – under the general rules of Danish law relating to the making up of taxable income by limited liability companies. This includes the rules relating to fiscal writing-off to the extent these rules have not been departed from under the stipulations of the concession.

According to section 31, the concessionaire is entitled to write off any expense incurred in relation to construction of roads, airfields, harbours, buildings, ships, aircraft, machinery, pipe lines and transmission lines, storage tanks as well as expenses connected with any acquisition whatsoever for the use for the mining enterprise, provided always that the expense has not been deducted as an operating cost item.

The writing-off in accordance with section 31, shall not be commenced prior to the point of time, when the concessionaire through the operation of the mine has earned an amount corresponding to the capital which has been invested in the enterprise, as the tax is not computed until then. After that date the writing-off may be effected by up to 30% annually on the depreciated cost of the asset concerned at the time in question.

In article 35 of the Greenex concession it is laid down that the amount of royalty calculated may be reduced by deduction of an amount corresponding to what the company has withheld from foreign shareholders by way of dividend tax on their shares in Greenex A/S, and any amount which has been paid by way of the annual fees per hectare of concession area.

In the Greenex concession, the main source of remuneration to the State was a special

tax, which by mistake was called royalty. In contrast to this the two hydrocarbon concessional regimes provide for royalty in a more traditional sense.

In section 13.02, the Jameson Land concession lays down that the royalty is 12 1/2 % of the value of the hydrocarbons shipped or otherwise transported from Jameson Land and the liquid hydrocarbons having been utilized in the concessionaire's operations in the area.

In relation to the problem of the calculation of the production, the Jameson Land concession includes detailed technical rules on the measuring of the hydrocarbons.

According to section 9 of the Danish License, the royalty on liquid hydrocarbons is calculated on the basis of the quantity of hydrocarbons produced from each hydrocarbon deposit within each calendar quarter.

In section 10 of the Danish License is stated that the average price applicable for each quarter is determined by dividing the total value, derived under the rules of this section of the Danish License, of all quantities of hydrocarbons subject to royalty and produced in the quarter concerned by the sum of the said quantities expressed in terms of cubicmetres of liquid hydrocarbons.

One issue is the calculation of the production, another issue is the rates of the royalty.

In section 13 of the Jameson Land concession is laid down that the concessionaire shall pay a royalty on the hydrocarbons produced pursuant to the concession. The rate of the royalty is 12.5 % of the value of the hydrocarbons.

For the first exploitation concession, however, the Jameson Land concession lays down in section 13.05 that the royalty rate is 5 % for the first 31.797.500 cubic metres of hydrocarbons. This reduced royalty-rate applies, however, only to those quantities of hydrocarbons for which royalty-payment falls due within five years from the start of production.

In section 16 of the Jameson Land concession it is stated that if operations in pursuance of one or more exploitation concessions cannot be undertaken at a cost level, including royalty, taxes and duties, which permits competitive deliveries of hydrocarbons to the world market with a profit margin for the concessionaire which is reasonable considering the type of activities involved, the Minister for Greenland will, in accordance with Article 2 in the Act on Mineral Resources consider a possible reduction of or exemption from royalty.

In section 9 of the Danish License it is laid down that the rates of the royalty are: 2%

of the value of that part of the production in a quarter that does not exceed the equivalent of 72.500 cubicmetres of liquid hydrocarbons. 8% of the value of that part of the production in a quarter that exceeds the equivalent of 72.500 cubicmetres of liquid hydrocarbons but does not exceed the equivalent of 290.000 cubicmetres of liquid hydrocarbons. 16% of the value of that part of the production in a quarter that exceeds the equivalent of 290.000 cubicmetres of liquid hydrocarbons.

In relation to the calculation of royalty, a final problem is the valuation of the production. The Jameson Land concession lays down in section 14, that for the purpose of calculating royalty, norm prices will be fixed for the hydrocarbons produced. The norm price will correspond to the market price in trade between independent parties under free conditions adjusted to the valuation point applicable to the hydrocarbons transported away from Greenland.

According to section 10 of the Danish License, the royalty is chargeable on the value of the quantities of hydrocarbons. The value of the hydrocarbons subject to royalty is calculated by using the average price established on the basis of the value at the ship's intake flange, or the value at the intake flange of a pump-installation used to pump the produced hydrocarbons through a pipeline.

According to section 11 of the Danish License, the licensee shall furnish by means of a statement all information relevant to the calculation of royalty. Where a final or provisional statement is not duly submitted, or where information to be submitted, is not furnished by a deadline set by the Minister of Energy, the Minister of Energy shall determine the amount of royalty due.

13.3.5. Public participation.

Other means of public revenue is through public participation as joint concessionaire[19].

The size of the public participation is mentioned already in the preamble of the Jameson Land concession, as it lays down that a Danish/Greenlandic public participant has a participating percentage of 25% as regards exploration operations in areas not covered by an exploitation concession. As regards exploitation concessions, it is expressed that the

---

[19] Cf. chapter 9.5.6. above.

size of the public participating percentage will be fixed according to the provisions of section 18 of the concession.

Section 18 of the Jameson Land concession lays down all the detailed rules on public participation as summarized below.

In exploration operations in areas where no exploitation concession has been issued, the Danish/Greenland public participant will participate with a percentage of 25%. The public participant's share of expenses for these operations, including expenses for the fulfilment of obligations and terms stipulated in the concession or pursuant to the concession, is borne solely by the other companies participating in the concession.

The public has a right to participate in any exploitation concession under the Jameson Land concession.

The size of the percentage in an exploitation concession to which the public is entitled will be fixed by the Ministry in connection with the issuance of the exploitation concession on the basis of the expected daily peak production of hydrocarbons according to a scale, which sets forth the maximum percentage to which the public is entitled. This ranges from 25% to 50%[20].

Public participation takes effect from the issuance of the exploitation concession. The public participates in the exploitation concession and in the transportation of hydrocarbons produced on equal terms with the other companies participating in the concession with rights and obligations in proportion to the public's percentage. The public participant is, however, not liable for obligations incurred before the issuance of the exploitation concession.

If the size of public participation is to be increased or reduced as a result of re-calculations of the production, the revision takes effect from the date of the submission of the declaration. More detailed regulations regarding the implementation of the revision, including regulations regarding the valuation of the assets which are to be transferred, are stipulated in the Operating Agreement, which is a separate agreement concerning the operating relationship between the participating companies.

At present the participation options of the public are seen as a negative element by the

---

[20] This uncertainty has also been criticized in the recent report from the political strategy working group, see Raastofforvaltningen for Groenland, ibid.

mining industry. The industry claims that a total of 50% participation is to high and creates problems in relation to the control of the enterprise and in relation to admittance of new private investors in a project. The negative opinion of the public participation relates both to the exploitation phase and to postponed participation in the exploration phase[21].

The claimed purposes of public participation in explorations are several; the possibility to participate in the project from the inside; the possibility to obtain a bigger public share in the exploitation phase; and the possibility to generate know–how in the public company Nunaoil A/S. However, these arguments are not very good. The inside participation in exploration is only of relevance if the public participant is appointed as operator for the project. The possibility of major public participation in the development and exploitation phase is not realistic either, because the development of an exploitation site requires considerable capital. The development of a mine like the Greenex mine at Marmorilik is estimated to cost approximately one billion DKK in todays prices. The authorities do not have the desire to take economic risks at this scale[22].

In relation to the North Sea, section 13 of the Danish License lays down that the public participant Dansk Olie– og Gasproduktion A/S, referred to below as DOPAS, shall exercise for the State the rights under the Danish License in proportion to the size of the share held by it and otherwise in conformity with the joint operating agreement approved by the Minister of Energy. DOPAS' share of the costs of activities under the license is borne by the other co–licensees until 180 days after an acceptable request for an extension of the license for the purpose of production has been received by the Minister of Energy. The DOPAS, as of that time, shall cover a part, corresponding to its license share, of such obligations as may arise or are connected with payments or services thereafter.

13.3.6. Various other expenses.

In addition to fees, royalty or taxes, the concessionaire has the burden of various other expenses.

In section 23 of the Jameson Land concession it is laid down that at the request of the

---

[21] See Raastofforvaltningen for Groenland, supra, at pg. 27.

[22] See Raastofforvaltningen for Groenland, supra, at pg. 28.

Ministry, the concessionaire will meet the costs in providing transportation facilities for representatives of the Ministry or other public authorities between the place to be inspected and the airport.

The concessionaire of the Jameson Land concession shall reimburse all expenses which in connection with said exploitation concession are defrayed by the Ministry or by other parties on the behalf of the Ministry in the performance of the Ministry's authority according to the concession. Expenses, however, which have incurred prior to the start of production and which are reimbursed by the concessionaire in accordance with the above rules, may be accumulated by the concessionaire without addition of interest and set off against the royalty. As regards expenses which have incurred after the start of production, the amount which the concessionaire shall reimburse in each calendar year is limited to an amount corresponding to the royalty which falls due in that calendar year. The amount to be reimbursed by the concessionaire may be set off against the royalty.

The rules concerning various expenses in connection with exploitation in Greenland are similar to those applied to the North Sea activities. According to section 16 of the Danish License, the licensee shall conduct, and/or bear such expenses as are involved in, advanced theoretical and practical education of personnel employed with the Ministry of Energy, the Danish Energy Agency, and the Geological Survey of Denmark or in other Danish authorities, and employees and students at Danish research and educational institutions.

In section 20 of the Danish License it is laid down that the licensee shall, when the supervising authority so requests, be responsible for the transportation of representatives of public authorities from the places of work of those concerned to and from the places where the activities are being performed, and shall provide accommodation. Any expenditures are borne by the licensee.

A particular expense is caused by requirements of taking out different types of insurance.

Pursuant to section 40 of the Jameson Land concession, the concessionaire shall pay compensation for damages caused by operations under the Jameson Land concession even if the damage is accidental and regardless of who the damage effects. If the person who has suffered damage has deliberately or by gross negligence contributed to the damage, the compensation may be reduced or annulled.

To secure the fulfillment of the concessionaire's obligation to pay compensation for

damages caused by operations under the Jameson Land concession, the concessionaire shall arrange for a third party liability insurance on conditions which at any time provides a reasonable coverage.

The only provision on insurance in the Greenex concession is in section 14. According to section 14, the concessionaire shall keep the staff employed at the enterprise in Greenland covered against consequences of accidents under the accident insurance law applying in Greenland at the time in question.

According to section 30 of the Danish License, the licensee's liability for damages under the Subsoil Act must be covered by insurance, which shall provide reasonable coverage, in light of the risks involved in the operation of the enterprise and the premiums to be paid.

13.3.7. Payment technique, the dues and interest rates.

As experienced in the Phillips/Ekofisk royalty case discussed in chapter 11.3.6 above, there is considerable economic interest in the determination of the payment technique, the dues and interest rates.

The Jameson Land concession includes numerous provisions in this relation. Payment of compensation for incomplete work obligations must be made not later than six months after the Ministry has made a claim for this.

Pursuant to section 14.01 of the Jameson Land concession, the royalty are payable monthly and must be paid to the Ministry not later than at the end of the calendar month following the calendar month in which the hydrocarbons produced have been shipped, transported, sold, utilized, flared or wasted.

Section 39 of the Jameson Land concession lays down the rules on interests, and it states that if the concessionaire does not pay royalty, fees and other amounts owing when due, the concessionaire shall pay an annual interest on the amount owing, corresponding to the prevailing rate of bank interest as fixed by the Danish Central Bank (Nationalbanken) with addition of two percent. At the moment the fixed rate is 8.5 % p.a. The same interest rate applies to amounts which are to be paid by the Ministry to the concessionaire.

In section 26.04 of the Greenex concession, it is laid down that the annual fee per hectare of concession area shall fall due for payment at the latest two months after the expiry of a calendar year. In the event that payment is not made in due time, interest must

be paid on any amount due at an annual rate corresponding to the bank rate fixed by the Central Bank of Denmark at the time in question.

According to section 37 of the Greenex concession, the tax (called royalty) must be paid to the Ministry for Greenland at the latest two months after the expiry of any quarter. After the expiry of the last quarter of any calendar year the amount of tax payable for the whole year is calculated, and the final computation of the tax is made. In the event that payment of the balance of the tax is not made in due time, the concessionaire shall pay interest on the amount due at an annual rate corresponding to the bank rate fixed by the Central Bank of Denmark at the time in question.

In section 11 of the Danish License it is laid down that the royalty is determined quarterly. Not later than 30 days after the end of each quarter, the licensee shall submit to the Minister of Energy a statement of the royalty for the quarter concerned.

Any provisionally calculated royalty and any royalty due under a final royalty statement must be paid to the Minister of Energy by the deadline for submission of the statement. If payment is made after the deadline of 30 days after the end of each quarter for submission of the statement, interest is charged at an annual rate equal to the official bank rate set by the Central Bank of Denmark from time to time, plus 6%.

13.3.8. Concluding remarks.

Against the background of this survey of the economic counter performances from the concessionaires to the state in return for the exploration and exploitation rights, one may conclude that the major burden on a concessionaire is the enormous risk of investing huge sums without adequate return.

Generally speaking, however, the fortunate concessionaire receives his investments back. All the costs of the initial investment obligations, including all the various expenses and also the fixed area lease fees, may be deducted in the company tax payable to the State. In the Greenex case all costs could be deducted in the special tax called royalty. Under the hydrocarbon concessions only some of the expenses could be deducted in the royalty; for instance the costs of supervision reimbursed to the State authorities[23].

In relation to the special hydrocarbon tax applying in Denmark it is worth mentioning

---

[23] Cf. chapter 9.5.4. above.

that the oil companies operating in the North Sea have not paid any hydrocarbon tax since 1985 because of the drop in oil prices and because of the access to deduct all exploration costs in the outcome from exploitation activities. Consequently, the main source of public revenue from the concessionaires has been via the ordinary company taxation.

In general terms, however, the direct economic remuneration to the State is limited to the area fees until the exploitation site has been developed and has been in production for some time. From that point in time the income based tax (company taxation) and the production based tax (royalty) are quantitatively the chief forms of funnelling exploitation income to the State[24].

The production based tax (royalty) might have to be abandoned again in Greenland in order to promote the investment. Most hard mineral producing countries use production-based royalties and special mining taxes. However, in Chile for instance, mining investment is subject only to ordinary income taxes, and this has been characterized as an aggressive investment promotion policy with incentives of considerable power[25]. Similarly, the Greenlandic mineral strategy working group recently concluded that Greenlandic circumstances of costs etc. do not provide a basis for the computation of production based royalty of any significance[26].

In the concession arrangements examined here is no income to the State by means of consumption taxes and duties because of exemption to the concessionaires. However, some revenue may be the result of labour force income taxation and taxation in relation to the increase of local activities and local trade. But then there are public expenditures too in relation to this higher level of general activity.

At present, one may also conclude that the way the various economic counter performances are linked together provide an incentive for the concessionaire to undertake

---

[24] This is also the case in many mining joint ventures around the world; see the conclusions of Fritzsche, Michael (1982): "Fiscal Regime"-chapter in Schanze et al (ed): "Mining ventures in developing countries, Vol. II", Metzner, Frankfurt a.M. (1982) at pg. 138.

[25] See the collection of Chilean concessions annotated by Thomas Waelde in Fischer, Peter (ed)(1988): "A collection of international concessions and related instruments" Vol. 7, Oceana, New York (1988), at pp. 153-163.

[26] See Raastofforvaltningen for Groenland, supra, at pg. 30.

the exploration tasks and the development tasks in a full hearted way in order both to recover all investments as soon as possible, and to reduce the accumulation of general costs, including area fees. In particular the loss of interests is worth considering.

A certain winner in a concession is the public participant, which takes part only in the profit, generally speaking. The public participant, typically a State-owned company, may accumulate profit and become an economic giant, if it does not undertake other public tasks involving economic "losses".

13.4 ACCESSORY COUNTER-PERFORMANCES FROM THE CONCESSIONAIRES

13.4.1. Good international engineering practices.

Besides the requirements of investments, the concessions also include rules concerning how the investments shall be made, by means of work schedules and work obligations[27]. Art. 23 of the 1991 Mineral Resources Act prescribes that any activity under a concession must be in accordance with acknowledged international practice in the field of work.

The Jameson Land concession lays down i section 6 that the concessionaire's exploration operations must be carried out in accordance with good international oilfield practices under similar circumstances. The exploration shall include such geological and geophysical surveys, investigations and evaluations, including wells, as are necessary to determine whether there is a technical and economic basis for exploitation of hydrocarbons within the concession area. During the first six years of exploration the concessionaire is committed to undertake multichannel reflection seismic and gravimetric investigations consisting of at least eight hundred line kilometers within the concession area.

When hydrocarbons are discovered, the concessionaire shall according to section 7.02 submit a programme for the further work. According to section 7.13 of the Jameson Land concession, the exploitation is to be carried out in a responsible and appropriate manner. Due consideration is to be given to i.a. technical, good reservoir management and safety aspects, as well as avoiding waste of mineral resources. Pursuant to section 26 of the Jameson Land concession, the concessionaire shall ensure that the operations are carried out in such a way that they do not endanger persons or third party property.

---

[27] Cf. chapter 9.4.3. above.

The Greenex concession states in section 11 that the concessionaire shall carry out his operations in accordance with proper and prudent customs of mining engineering with due regard to the size of the deposits of ore which are the basis of the operations, and to other existing economic conditions for the operation.

In pursuance of section 32 of the Greenex concession, the concessionaire shall process ore to concentrates in Greenland except when the ore has such high grade that without the customary processing to concentrate it may be shipped for processing in a smelter.

According to section 4 of the Danish License, the licensee shall carry out works specified in a Work Programme attached to the license. Where the licensee discovers any hydrocarbons, notice thereof shall promptly be given to the Minister of Energy, Moreover, no later than 6 months after the completion of the drilling during which the discovery is made, a report should be made giving details about the discovery and the programme for further works. The details of further works must be in line with good practice within the oil industry in the North Sea countries. The report shall make it clear whether a hydrocarbon deposit has been demonstrated under conditions such that production is technically possible and must be considered economically profitable (an evaluation programme).

According to the work programme, the licensee shall, not later than a certain number of years after the issuance of the license, have produced an up-to-date seismic coverage of the block in question.

The licensee shall, not later than a certain number of years after the issuance of the license drill a specific number of exploratory wells. The wells must be drilled in an appropriate manner that comports with good exploration practice, which shall include core drilling, extraction of samples, and production testing[28].

13.4.2. Transportation and sale of the products.

Returning to the Jameson Land concession, a particular problem is the transportation of the products from the distant places of exploitation. When the production of oil has started, the concessionaire is responsible for its transportation. Pursuant to section 12 of the

---

[28] Further analysis of work programmes are made by Date-Bah and Makbul Rahim (1987): "Promoting Petroleum Exploration and Development" in Khan (1987): "Petroleum Resources and Development" at pp. 102 f.

Jameson Land concession, the concessionaire shall take responsibility for transportation of the hydrocarbons produced from the place of production to the first port of import or transshipment outside Greenland, or in the case of sale for consumption or treatment in Greenland, to a point of delivery in Greenland. The operator shall manage this transportation.

Where the Ministry in pursuance of section 15 of the Jameson Land concession has demanded payment in the form of hydrocarbons, the concessionaire shall make the quantity of hydrocarbons required for payment of royalty available and conditioned in the same way as the rest of the production, at a point of delivery specified by the Ministry.

Similarly, in section 12 of the Danish License is laid down that where the Minister of Energy has demanded the royalty to be paid in hydrocarbons, the licensee shall make the quantity of hydrocarbons required for payment of the royalty available at a point of delivery specified by the Minister of Energy and shall ensure that it receives the same treatment, not to include refining or other more extensive treatment, as the other production from the deposit. The licensee may require the State to reimburse the usual expenses for the transportation between the point of valuation and the point of delivery.

Some of the North Sea licenses include a prerogative for the State to purchase all products at market price. In other parts of the world the States have also included such right in relation to hard mineral concessions. In the United States leading politicians have found that the possibility of an embargo of mineral supplies could prove more crippling to the nation than the 1973 oil embargo[29]. It has been concluded that the United States relies on unreliable foreign sources for mineral and materials critical to the economic health of the nation[30].

The Jameson Land hydrocarbon concession includes in section 30 a right for the State to purchase all hydrocarbons in critical situations like that[31]. The economic and practical

---

[29] See Burling, James S. (1982): "United States Minerals Policy – A proposal to revitalize the exploration and development of Domestic Mineral Resources" 24 Ariz.L.R. 881 (at pg. 887)(1982) with references.

[30] Ibid. at pg. 904.

[31] This situation is discussed below in subsection 13.6. in relation to force majeure.

impacts are presumably comparable to expropriation of produced products, and this might be the explanation to why such clauses were not inserted in the other two concessions analysed here.

13.4.3. Facilities other than the site itself.

The development of a mine or a well is more than the development of the mine or the well itself. Numerous other facilities are required and skilled personnel is needed to operate the installations.

Section 3.03 of the Jameson Land concession grants the concessionaire the right within the concession areas to carry out the construction of the necessary facilities and installations and to carry out other necessary operations in accordance with articles 16 and 21 in the 1978 Mineral Resources Act subject to approvals under sections 7 and 25 of the concession. The rules are now found in articles 10 and 25 of the 1991 Mineral Resources Act.

Pursuant to section 34 of the Jameson Land concession, the concessionaire shall as part of the operations provide acceptable living conditions with related required facilities for the employed personnel and access to medical assistance and nursing. If needed, the concessionaire shall provide access to education at primary school level.

In section 1.02 of the Greenex concession it is laid down that within the concession area the concessionaire may use the necessary areas and take possession of stone, gravel and such materials for the construction of buildings, for working and housing facilities, machinery, harbour installations, airfields, roads, local tracks, etc.

Pursuant to section 14.03 of the Greenex concession, the concessionaire shall provide satisfactory dwelling conditions and appurtenant facilities, such as access to medical attendance and nursing, supply of provisions, clothes, and other necessities of life for the staff employed within the concession area. Likewise the concessionaire shall procure facilities for teaching, provided that there is a demand for teaching.

According to section 18 of the Greenex concession, the Ministry for Greenland and other Danish authorities are entitled to use harbours, airfields, and roads constructed by the concessionaire. Such harbours and airfields shall likewise be open to public use.

13.4.4. Greenlandic and Danish personnel.

The Jameson Land concession states in section 31 that the concessionaire shall to the greatest extent possible employ Greenlandic and Danish personnel and train and educate such personnel with a view to employment in and management of the operations. The concessionaire shall submit to the Ministry for approval plans for training and education of the Greenlandic and Danish personnel employed in the operations.

According to section 8 of the Greenex concession, the concessionaire shall submit an application for the mine development, and among the issues contained in the application, shall be particulars of the number and the kind of the labour force, employees, and technicians contemplated to be employed at the mine development and during the operation of the enterprise, and particulars of the safety regulations which will be observed during the mine development as well as during the mining operations.

The safety regulations existing at the time in question, which may be laid down by the Ministry for Greenland or by any other Danish authority, must be complied with. The concessionaire shall at the performance of his operations in Greenland observe the same labour-protection regulations as apply to the other parts of Denmark. In the event that special labour-protection regulations are introduced in respect of mining operations in Greenland, such regulations apply.

According to section 15 of the Greenex concession, the concessionaire is entitled to employ skilled and technically trained personnel from abroad as required, provided that correspondingly qualified labour does not exist or is not available in Greenland. Otherwise the concessionaire shall to the greatest possible extent employ Danish labour.

Nowadays the need for training and technology transfer is so widely accepted that there is very little to discuss. Virtually all agreements between transnational oil companies and host governments provide for the training of nationals, for replacement of expatriates by national employees within defined time periods and for technology transfer[32].

Training of nationals and transfer of technology are included among the main objectives presented in the recent political initiatives in relation to Greenlandic resour-

---

[32] According to Zorn, Stephen (1983): "Permanent Sovereignty over Natural Resources" 7 Natural Res. Forum 321 (at pg. 327)(1983).

ces[33]. Like in art. 23 in its predecessor, the 1991 Mineral Resources Act in its art. 9 provides that the concessionaires may only employ foreign personnel if qualified personnel cannot be found in Greenland or Denmark[34].

13.4.5. Education of supervising authorities.

Not only does the labour force need to be trained. In order to understand the procedures of the concessionaire's activities, the authorities also need education[35].

In pursuance of section 33 of the Jameson Land concession, the concessionaire shall conduct and/or arrange advanced theoretical as well as practical training relevant to hydrocarbon operations in Greenland of personnel: A) carrying out tasks for the Ministry concerning supervision, B) employed by other public authorities, or C) employed by or studying at Danish or Greenlandic research or educational institutions. The concessionaire shall pay expenses arising from this.

According to section 16 of the Danish License, the licensee shall conduct advanced theoretical and practical education of personnel employed by the Ministry of Energy, the Danish Energy Agency, and the Geological Survey of Denmark or in other Danish authorities, and employees and students at Danish research and educational institutions.

13.4.6. National products and services.

As mentioned in section 13.3., the start of exploitation activities may have a positive effect on the national economy. This effect may be enforced through clauses which favour national products and services. Such clauses may be inconsistent with EEC legislation, but this should not render the use of such clauses in relation to Greenland, which is not part of the Common Market[36]. The 1991 Mineral Resources Act maintains such favourisation of Greenlandic enterprises in art. 2, par. 2. However, this article does not demand

---

[33] See Raastofforvaltningen for Groenland (1990): "Rapport fra Strategigruppen" pg. 15.

[34] See chapter 9.

[35] Cf. chapters 7.3. and 9.7.2 above.

[36] See chapter 6 above.

favourisation of Danish enterprises. This probably is a result of political controversy with the EC–authorities following favourisation of Danish enterprises in relation to the construction of the Great Belt bridge in Denmark.

In section 32 of the Jameson Land concession it is laid down that contracts, subcontracts, purchases of supplies and services related to the concessionaire's operations including exploration, development, production, storage and transport operations shall be assigned to Greenlandic and Danish enterprises, unless they are not technically and commercially competitive.

Greenlandic and Danish enterprises are defined as enterprises which have their domicile in Greenland or Denmark, and which mainly employ Greenlandic and/or Danish personnel.

The concessionaire shall in its contracts include provisions obliging such parties to observe similar rules as the concessionaire does concerning preference of Danish and Greenlandic enterprises.

Pursuant to section 16 of the Greenex concession, contracts, including sub– contracts, supplies and services relating to the exploration and exploitation operations of the concessionaire shall be assigned to Danish enterprises, always provided that these are technically and commercially competitive.

Similarly, in section 15 of the Danish License is expressed that the licensee undertakes to provide Danish companies with genuine opportunities, in competition with other companies, to obtain general contracts and subcontracts, and to provide goods and services, connected with the performance of the activities under the license. Furthermore, the licensee is responsible for compliance with these terms by anyone employed. According to section 17 of the Danish License, the licensee's exploration and recovery activities shall, to the greatest possible extent, be based in Denmark.

13.4.7. The environment and third parties.

Typically, the concessions also include reminders concerning the concessionaire's obligations to protect the environment and to respect third parties[37].

Pursuant to section 26 of the Jameson Land concession, the concessionaire shall ensure that the operations are carried out in such a way that they do not endanger persons or third

---

[37] About the content and character of such clauses, see also chapters 8.3.5., 9.6.5. and 11.3.7.3. above.

party property and that the risk of pollution and the risk of causing harm to the terrain, animal life and vegetation are reduced as much as possible. If the Ministry finds that the operations endanger persons or third party property or that the risk of pollution or a harmful effect on the terrain, animal life and vegetation exceeds what is acceptable, the Ministry may order the concessionaire within a period fixed by the Ministry to take remedial measures and, considering the extent and nature of damage to the environment, to undo such damage. If the Ministry finds it necessary, the Ministry may further order the concessionaire to discontinue that part of the operations which poses danger or risk of the above nature until the concessionaire has taken remedial measures.

When it comes to termination of a concession or the relinquishment of an area, section 38 of the Jameson Land concession lays down that to the extent that the Ministry does not want to take over equipment and installations, the concessionaire shall, within a period of time fixed by the Ministry, remove such items and shall moreover take the necessary precautions to prevent their posing risks or interference. If the concessionaire does not remove the items, the Ministry will be entitled to take the necessary steps to remove such items for the concessionaire's account and risk.

Similarly, section 37 of the Danish License states that upon termination of the license, the Minister of Energy may require the licensee to remove, within a period fixed by the Minister of Energy, all or part of any facilities, equipment and installations, whether they belong to the licensee or to any other party, which the State does not choose to take over.

In section 1 of the Greenex concession it is laid down that the concessionaire may undertake any and all landscaping that may be found necessary for exploration and exploitation by the concessionaire. The Greenex concession lays down in section 4.02 that within three months after the termination of the Greenex concession the concessionaire shall have removed anything which may present a danger of pollution nuisances or which may entail danger to persons or to the property of a third party. The Greenex concession states in section 12 that the concessionaire shall ensure that pollution nuisances arising from normal operations should be limited insofar as possible.

On December 13th 1985, the Minister for Greenland and Greenex A/S entered into an agreement concerning a moratorium for Greenex A/S and concerning a clarification of the environmental and cleaning obligations following closure of the mine.

In this agreement, the Ministry accepted that the company reserved DKK 80 million

for environmental measures in connection with closure. However, this amount was to be regulated in accordance with the retail price index. The Ministry should determine the priority of the environmental measures and remedies. By the agreement, the Ministry ensured that it would not advance any further environmental claims, and thus the cleaning obligations were limited to a cost of DKK 80 million.

This limit was a precondition for the parent company's grant of subsidies to the continued running of the mine by means of a write off of share capital and cash payment of responsible loan capital.

Now art. 19 of the 1991 Mineral Resources Act includes a requirement of the submission of a plan for the closure of an exploitation activity together with application for approval of planned activities under a concession.

13.4.8. Economic guarantees for proper management.

The concessions include certain economic guarantees for the concessionaire's proper management of the concession area and the exploitation activity[38].

In section 13 of the Jameson Land concession is laid down that royalty must be paid on hydrocarbons which have been wasted or flared without prior permission. Royalty shall not, however, be paid on hydrocarbons which are wasted, provided the concessionaire can justify that the waste was not caused by his failure to follow good international oil-field practices under similar circumstances.

Pursuant to section 40 of the Jameson Land concession, the concessionaire shall pay compensation for damages caused by operations under the Jameson Land concession even if the damage is accidental and regardless of who the damage effects. If the person who has suffered damage has deliberately or by gross negligence contributed to the damage, the compensation may be reduced or annulled.

To secure the fulfilment of the concessionaire's obligation to pay compensation for damages caused by operations under the Jameson Land concession, the concessionaire shall see to it that the operations pursuant to the Jameson Land concession are covered by a third party liability insurance on conditions which provide a reasonable coverage at all times.

In section 42 of the Jameson Land concession it is laid down that in order to ensure

---

[38] Cf. chapter 9.5.1. above.

fulfilment of the concessionaire's obligations under the Jameson Land concession, the ultimate parent company of each company participating in the Jameson Land concession will sign a declaration of guarantee. The guarantee declaration will comprise fulfilment of obligations toward Danish and Greenlandic public authorities, as well as the liability for damages caused by exploration operations or by operations under exploitation concessions.

In section 31 of the Danish License it is laid down that if the license is granted to several parties jointly, they are jointly and severally liable for any damages claimed pursuant to article 35 of the Subsoil Act and for the satisfaction of any obligations to the State under the license.

Section 32 of the Danish License lays down that in order to ensure performance by the licensee of all of its obligations under the license, it shall within a period of 30 days from the granting of the license provide security in an amount and of a kind, possibly in the form of a parent company guaranty, acceptable to the Minister of Energy.

Pursuant to section 38 of the Danish License, the licensee shall indemnify the State against all claims whatsoever which may be made by any third party against the State as a consequence of the licensee's activities.

13.4.9. Concluding remarks.

The accessory counter performances from the concessionaires to the State in return for the exploration rights and the exploitation rights, are accessory to the direct economic counter performances perhaps only in the eyes of the concessionaires. The accessory performances may actually be held of even equal or greater importance to the State than the direct economic counter performances, although several of the accessory performances are considered obvious by concessionaires of a certain standard.

The most favoured clauses in relation to national personnel mean the avoidance of a flow of wages and taxable income out of the country. Down the line in the labour force, the employment of nationals also entails reduction of public expenditure on social welfare. The employment of nationals also supports the position of the government by means of the creation of a positive attitude among the population towards the exploitation activities.

The preferential choice of national products and services serve at the secondary level the same purposes as the preference of national personnel.

Furthermore, the training of national personnel and the development of national

products may lead to future export in relation to other projects in other countries.

The most favoured nationality clauses would cause difficulties in Denmark in relation to EEC legislation, but since Greenland is not a direct member state of the community it is not a problem to quite the same degree. Hypothetically, one could imagine a claim in line of a postulate saying that the Danish State authorities may not take part in and benefit from arrangements which favour Danish nationals to the disadvantage of other European nationals. The problem, if it is a problem, could be solved by the administrative transfer of the Mineral Resources Administration to the Home Rule authorities. At least, the change of status from full Greenlandic EC-membership to the OCT affiliation should make it possible to use clauses like this to favour Greenlandic workers and enterprises. However, the discriminatory dealings of concessionaires in Greenland are subject to the investigations of the Appeal Board for Public Works, which is set up in pursuance of EC law, following a commission complaint concerning the "purchase Danish" clause relating to the Great Belt bridge construction work[39].

The concessions also include provisions concerning the requirement of good practice, proper and prudent operating practices in the exploration and exploitation work. Such quality of work is obvious to the concessionaires of international standard. The explicit requirements merely serve the purpose of placing the economic responsibility in the event of accidents and malpractice.

Also included are provisions concerning the protection and respect for the environment, as well as third parties affected by the activities. One may characterize such clauses as reminders to both the State authorities and the concessionaires about the State authorities' constitutional task to safeguard the territory of the State and the inhabitants and their rights. At the same time, some of the State's general conditions for the exercise of exploitation activities are thus made clear to the concessionaires.

The concessions include provisions concerning the various necessary facilities constructed by the concessionaires. One side of this issue is the required standard of living conditions for the staff of the enterprises. The requirements in this respect may be seen as results of the State's concern for the persons within its territory. One could say that the staffs of the enterprises are placing their lives in the hands of the concessionaires in remote

---

[39] See Act no. 344 of June 6th 1991.

places of the territory of the State, and it is thus particularly important to underline the concessionaires' duty to look after the welfare of the employees.

Another side of the facility issue is related to the concessionaires' construction of roads, harbours, hospitals and airports needed for the exploitation activities. These construction works constitute a development of the local area in question; a development which would not have taken place otherwise. It would be without meaning and a loss of resources, if the local population and the authorities were not allowed to use such facilities, and the concessions thus include provisions to this effect.

It is also obvious that the concessions should require economic guarantees covering the concessionaires' fulfilment of their obligations according to the concessions and according to law in general. Without such guarantees the State would be undertaking too great an economic risk in relation to accidents or malpractice caused by economically unstable concessionaires. The guarantees involved are by means of liability insurance, workers safety insurance, reserves for area restoration and different types of promissory declarations of economic responsibility from ultimate foreign parent companies.

A final advantage for the State, is the State's option to demand that the direct economic counter performances be converted into minerals. In such an event the concessionaires are obliged to deliver to places accessible by ordinary means of transportation. Such arrangements may prove a considerable advantage to the State in the event of shortages such as those caused by international crisis or trade embargoes. Perhaps ought it to be considered to include a right for the State to purchase all oil or mineral products at market price for strategic reasons. However, if the State is in serious trouble in relation to the mineral in question, the State will probably consider the constitutional right of expro-priation against compensation. The arrangement is more likely to be of use in relation to the regulation of the supplies and the prices of the mineral in question at the national market.

One may conclude that the accessory counter performances are of less importance to the concessionaires, who are more concerned with capital gains. However, the accessory performances are of great importance to the State, since it is by such means that the State strengthens and consolidates its position as a wealthy, attractive and independent State. The direct economic counter performances may make the State wealthy in the short term, but still more attractive is the prospect of the State making long term gains in wealth and

economic independence.

13.5. THE RELATIONSHIP BETWEEN THE STATE AND THE CONCESSIONAIRE

This section is concerned with the physical appearance of the concession documents, which naturally depends whether a concession is a permit or a contract type of document. Furthermore, the section analyses the rules in the concessions concerning the practical relationship between the parties to the concession, which may help to clarify whether the document is made between two equal contract parties, or whether it is a document issued by a Sovereign to a private party in order to provide a legitimation for this private party in relation to other private parties[40]. Finally the section covers the questions of the relationship to parties outside the concession agreement who may be affected by the activities of the concessionaire.

13.5.1. The formal appearance of the concession documents.

As a starting point it might be mentioned that unlike earlier concessions in Greenland, the Greenex concession and the Jameson Land concession have not been enacted by Statute and thus have not been published in the official gazette Lovtidende[41].

The Jameson Land concession consists of a considerable number of sections and sub-sections, but the text of the first page is outside the section numbering system. It must therefore be regarded as a preamble, as it comes before the numbered provisions of the concession; although it is included in the concession under the heading "Concession to explore for and exploit hydrocarbons in an area of Jameson Land in East Greenland".

The first part of the preamble of the Jameson Land concession refers to the legal Act under which it is granted. It lays down that under the provisions of the Act on Mineral Resources in Greenland, No. 585 of 29th November 1978[42], the Minister for Greenland

---

[40] Cf. the general discussion in chapter 11.

[41] Compare the concluding remarks in chapter 12.5. concerning the previous concessions to the Northern Mining Company and the Arctic Mining Company, as well as the remarks in chapter 11.4.

[42] Cf. chapter 9 above.

hereby grants the companies mentioned (the concessionaire) the sole and exclusive right to explore for hydrocarbons in the area of Jameson Land in East Greenland defined in section 2 of the concession, according to chapter 3 of the Act on Mineral Resources in Greenland, as well as the sole and exclusive right to explore for and exploit hydrocarbons in areas to be delimited, according to chapter 4 of the Act on Mineral Resources in Greenland. Finally the preamble of the Jameson Land concession mentions the date at which the concession entered into force, which was on January 1, 1985.

Before the numbered sections of the concession, the Greenex concession under the heading "Concession to explore and exploit certain mineral raw materials in an area near Umanak" states that under the provisions of the Mineral Raw Materials in Greenland Act, (Act no. 166 of May 12th, 1965, amended by Act no. 203 of May 21st, 1969[43]), the Ministry for Greenland hereby grants Greenex A/S of Copenhagen, the sole and exclusive right to explore for and to exploit the raw materials referred to in the concession. The exclusive concession is granted on the conditions set out in the Mineral Raw Materials in Greenland Act, and also on the conditions set out in the concession.

The preamble of the Danish License states that the Minister of Energy, pursuant to sections 5 and 13 of Act no. 293 of June 10th, 1981[44], concerning the use of the Danish Subsoil, and on the basis of the information stated in the companies' application of a given date and otherwise obtained, hereby grants jointly to some private companies, indicating their number of registration and the addresses of their registered offices, as well as their percentual share of the license, together with the public owned Dansk Olie- og Gasproduktion A/S, register number 66.108, having its registered office at Birkeroed, Denmark, for a certain percentual share (these companies mentioned are referred to in the license as the Licensee) of a License for the exploration for a production of hydrocarbons within the area specified in section 2 of the license.

Returning to the Jameson Land concession, the other end of the document, at page 53, outside and after the articles of the concession, are the signatures of, on the left side, the Minister for Greenland, and on the right side of the page, the representatives of A/S Arco

---

[43] Cf. chapter 9.1.

[44] Cf. chapter 10.1.2.

Greenland (Petroleum Exploration and Production), Arktisk Minekompagni A/S and the Danish/Greenlandic public Participant.

At the end of the Greenex concession, outside the section numbering, are placed the signatures of, on the one side, the Minister for Greenland and a civil servant, both on the behalf of the Ministry for Greenland, and on the other side, of three representatives on behalf of Greenex A/S, the concessionaire.

This description of the physical appearance of the documents does not disclose the character of the documents clearly in one direction or the other. But together with the following details of aspects of the practical relationship between the parties, the pieces form a basis for interpretation. Here it is worth mentioning that the enacted versions of the older concessions discussed in chapter 12 did not include signatures from the concessionaires.

13.5.2. Definitions of expressions

Section 1 of the Jameson Land concession lays down a number of definitions of expressions used in the concession. Section 1 lists the following expressions: Greenland, hydrocarbons, crude oil, condensate, natural gas, NGL, exploitation concession, operations, discovery, deposit and exploratory well. The Greenex concession does provide a similar list of definitions, and the Danish License limits itself to defining hydrocarbons, liquid hydrocarbons and hydrocarbon deposit. However, quite a few definitions are provided within the legislative framework.

The activities of the concessionaire under a concession are normally carried out by an operator. This is usually the company with the biggest participating percentage among the companies included in the concessionaire. The operator is specifically defined in the Jameson Land concession.

According to section 22 of the Jameson Land concession, the operating relationship between the companies participating in the concession is established by an Operating Agreement approved by the Minister for Greenland and the Greenland Executive and signed at the granting of the concession. Any amendment to or modification of the Operating Agreement is subject both to approval by the Minister for Greenland and to agreement with the Greenland Executive. Furthermore, section 22 lays down that A/S Arco Greenland (Petroleum Exploration and Production) is the operator for the concessionaire.

13.5.3. Communication and supervision.

The concessions include numerous rules on how the parties to the concession are supposed to collaborate and to conduct their affairs in various situations.

In section 44 of the Jameson Land concession it is laid down that all notices and other communication provided for in the Jameson Land concession must be made in writing and must be delivered by hand or sent by registered airmail, as appropriate, return receipt requested, or by telegram or telex (with confirmation by mail) to the addresses of the concessionaire (c/o the operator), A/S Arco Greenland (Petroleum Exploration and Production), Arktisk Minekompagni A/S, The Danish/Greenland public Participant and the Ministry. The Jameson Land concession lists the full addresses, phone-, telex- and cable-numbers of these parties. Further detailed rules are included in sections 3, 7, 24, 25 and 40 of the Jameson Land concession, regulating information, obligatory reports, applications, requests, plans, offers, questions, approvals and other communications. The Greenex concession and the Danish License also include such rules, but not as regulatory in detail.

According to section 23 of the Jameson Land concession, the Ministry shall supervise the concessionaire's operations and may appoint other parties to carry out the supervision on behalf of the Ministry[45]. The Ministry will be entitled in all respects to monitor the work and shall have free access to all parts of the concessionaire's facilities, installations and offices. The Ministry may demand any information regarding the operations, accounts and bookkeeping including vouchers. The Ministry will be entitled to take out samples of materials and data which have been obtained as a result of the concessionaire's operations and to demand that further materials are provided for the purpose of sampling.

The Ministry may make on the spot checks and where necessary call attention to infringements of legislation or other provisions applicable to the concessionaire's operations. The Ministry will also be entitled to issue such orders as it deems necessary, and, if the Ministry considers the infringement to be serious, it may order the operations or part of these to be suspended temporarily while weighing the nature and impact of the infringement against the impact of a suspension of the operations or part of these.

The Ministry will be entitled to attend as an observer at the meetings of the decision

---

[45] Cf. chapter 9.7. above.

making bodies established in accordance with the Operating Agreement, such as the Operating Committee and subcommittees thereof. The Ministry shall be summoned with the same notice and shall receive the same material as the members of the decision making bodies.

At the request of the Ministry, the concessionaire will bear the costs in providing transportation facilities for representatives of the Ministry or other public authorities between the place to be inspected and the airport in Mesters Vig or the concessionaire's airport in East Greenland. The same applies to accommodation at the place to be inspected[46].

Section 24 of the Jameson Land concession requires the concessionaire to arrange for inspection of all relevant information. This concerns not only areas covered by an exploitation concession but also areas subject to exploration operations outside exploitation concession areas. In addition the concessionaire is obliged to submit information to the Ministry in the form of samples, raw data, processed results, interpretations and geological, environmental and technical information as well as information on finances and accounts.

The Ministry may stipulate more detailed regulations for the submission of information, for instance on time limits, the type and form of the information and the degree of specification. Moreover, the Ministry may require further information to be submitted in any specific case, if this is considered necessary.

The Ministry may also stipulate regulations concerning the concessionaire's preservation and utilization of samples, raw data, processed results, interpretations and evaluations of a geological, environmental, technical as well as economic, including accounting, character.

In section 27 of the Jameson Land concession it is laid down that the Ministry may demand that any measuring of the quality and quantity of hydrocarbons shall be inspected by a representative appointed by the Ministry. Neither the methods nor the equipment used for hydrocarbon measurement may be altered without the Ministry's approval. The Ministry may at any time inspect the equipment used for hydrocarbon measurement.

In section 19 of the Greenex concession it is laid down that the Ministry for Greenland is entitled to supervise the operations of the concessionaire during the mine development

---

[46] Cf. chapter 12.2. The cryolite concession of 1935 provided for permanent presence of an inspector at the concessionaire's expenses. This system is also anticipated by the provisions of the Greenex concession, cf. below.

as well as during the operation of the mine. The inspectors appointed by the Ministry for Greenland shall in every respect be entitled to follow the work and the operations and shall have free access to all parts of the enterprise, including its accounting and book keeping.

The inspectors are entitled to demand any and all information, and to take samples of ore, minerals, and mineral-bearing substances. The Greenex concessionaire shall grant the inspectors free access to all information on the development of mines and on their operation, including free access to information relating to accounts of parties other than the concessionaire.

According to section 19 of the Danish License, representatives of the supervising authority are entitled to attend as observers at any meetings of committees or groups set up pursuant to the operating agreement. The supervising authority shall receive the same notice and be given the same material, including minutes of meetings, as the licensee.

In section 24 of the Danish License it is stated that any equipment, procedures and units of measurement for the qualitative and quantitative measurement of hydrocarbons produced are subject to the approval of the Minister of Energy. Measurements shall be performed in a recognised and customary manner, and are subject to the supervision of the Minister of Energy.

13.5.4. Confidentiality, good faith and intentions.

Returning to the Jameson Land concession, section 28 lays down that samples, data and other information will be treated as confidential for a period of five years from the time when the information is obtained and available to the concessionaire, unless the concessionaire has given his written consent to the release of the material.

The Ministry will be entitled, without restrictions or conditions, to make use of, including release for publication, material which in the opinion of the Ministry is of general interest, including data and evaluations of an environmental, geotechnic and topographical nature.

In section 22 of the Danish License it is laid down that any authorities and persons performing duties pursuant to the Subsoil Act, and any persons assisting therewith, are subject to the confidentiality obligations under the provisions of articles 152 and 264b of

the "Borgerlig Straffelov" (Civil Penal Code)[47] in respect of such information and samples, etc., as may be received by the authorities from the licensee under the license and under articles 26 and 34 of the Subsoil Act.

The above mentioned confidentiality provisions do not, however, prevent the disclosure of such information if no legitimate interest of the licensee requires such confidentiality or if it is determined that the licensee's interest in maintaining confidentiality must yield to considerations of essential public interest.

Because of the powers vested in a State, the State in a concession needs to ensure the concessionaire about its good faith and intentions in the event of a need for re-negotiation of the concession terms.

Section 2.09 of the Jameson Land concession lays down that if the concession area or a part thereof ceases to be under the sovereignty of the Kingdom of Denmark, the concessionaire shall respect such change in the status of the area without being entitled to make any claim on the Danish State. However, the Minister for Greenland will use his best efforts to ensure that the successor in the sovereignty to the area will respect the rights of the concessionaire granted under this concession.

In section 7.09 of the Jameson Land concession it is laid down that in connection with the issuance of an exploitation concession, the Ministry will establish an organizational framework with the Ministry's personnel and other necessary resources. This is to ensure that the Ministry's performance of the Ministry's tasks during the development phase can be carried out in such a way that a decision on the concessionaire's application for approval of production measures can be obtained as early as possible. The section underlines the interest of the public and of the concessionaire to have the application decided upon within a reasonable length of time.

This is to some degree repeated in section 25 of the Jameson Land concession, which expresses the Ministry's intention to perform its authority under the concession in such a way that decisions upon the concessionaire's applications and submitted plans are made within a reasonable length of time considering the character of the material submitted and the matters involved. In making such decisions the Ministry will take into account the concessionaire's interest in being allowed to carry out its activities with operational

---

[47] Greenland has its own Penal Code, which is inspired but different from the Danish Penal Code.

efficiency.

Apparently, there was not a similar need to ascertain the good faith of the State party in connection with the preparation of the Greenex concession and the Danish License.

13.5.5. Succession in the rights of the concessionaire.

In relation to the succession in the rights of the concessionaire[48], section 35 of the Jameson Land concession provides that if a lender financing the concessionaire's exploitation of hydrocarbons makes it a condition of the loan that it shall be possible at a later time to transfer the Jameson Land concession or a share in it to such lender, the Minister for Greenland may, in accordance with Article 21[49] in the Act on Mineral Resources in Greenland, promise in advance that should the occasion arise, the Minister will permit on specified conditions such transfer without amendments to the terms of the Jameson Land concession.

According to section 35.03 of the Jameson Land concession, the Ministry intends to approve the transfer of a participating percentage or a part of a participating percentage to one or more of the other companies participating in the Jameson Land concession, if, after the intended change of the distribution of the participating percentages, the concessionaire still possesses the necessary technical, economic and administrative capabilities for the carrying out of the operations[50]. This also applies if a request for the issuance of an exploitation concession is not endorsed by all companies participating in the Jameson Land concession.

It is stated in section 35.05 of the Jameson Land concession that as long as A/S Arco Greenland or Arktisk Minekompagni A/S are participating in the Jameson Land concession, the capital stock of A/S Arco Greenland must be owned by the Atlantic Richfield Company and may not be transferred without the prior approval of the Minister for Greenland in accordance with Articles 15 and 21 in the Act on Mineral Resources in Greenland.

---

[48] Cf. chapter 9.6.3. above.

[49] Now art. 27 in the 1991 Mineral Resources Act.

[50] In october 1988 part of the concession was transferred to Agip Greenland A/S with the consent of the Minister, cf. section 13.1.

According to section 33 of the Danish License, neither the license nor any interest therein may be assigned or otherwise transferred, either directly or indirectly, in whole or in part, to any third party or between several co-licensees, without the approval of the Minister of Energy. Corresponding restrictions shall also apply to the transfer of company shares in such amounts as may result in the transfer of a controlling interest in a company which is a co-licensee, and to the conclusion of agreements having the same effect. A fee may be charged for an approval given pursuant to these rules.

Similar rules were not included in the Greenex concession, but by the above mentioned supplementary agreement[51] of December 13th 1985, section 3.2, the State achieved a preferential right, for itself or for a third party appointed by the State, to purchase the shares in the concessionaire Greenex A/S or in the immediate parent company Vestgron Mines Ltd for an amount corresponding to the liquidation value, which was the value of the shares in the event of the mine closing down.

13.5.6. Co-existence.

Another problem dealt with in the concessions is the issue of co-existence with inhabitants, farmers, fishermen and "natives"[52]. The State has its obligations as a State, as for instance the tasks of the protection of the environment and the inhabitants. The concessions include rules whereby the concessionaire is reminded that the State cannot sell out fully of existing obligations and rights within the State. The State must maintain a right to interfere in the activities of the concessionaire in accordance with its rights and obligations[53].

In section 4.01 of the Jameson Land concession it is laid down that the concession does not restrict the lawful performance of activities by others within the concession area and the concessionaire shall respect the rights of others existing at any time. Where the concessionaire asks the Ministry that the rights of others within Greenland be terminated

---

[51] See above, section 13.1.

[52] Cf. chapters 8.3.5. and 9.6.5.

[53] Cf. the general discussion in chapter 11.1.

by expropriation in order for the concessionaire to conduct its operations, then the concessionaire shall pay the appropriate compensation. Pursuant to section 26 of the Jameson Land concession, the concessionaire shall ensure that the operations are carried out in such a way that they do not endanger persons or third party property and that the risk of pollution and the risk of causing harm to the terrain, animal life and vegetation are reduced as much as possible.

In section 1.03 of the Greenex concession is stated that as part of his exploration and exploitation operations the concessionaire shall have the right to utilize such streams, lakes, and other sources of water as exist in the concession area. Such right exists on condition that older, existing rights do not prevent it. Moreover, in pursuance of section 18 of the Greenex concession, the Ministry for Greenland and other Danish authorities are entitled to construct roads and the like for the use of the public within the entire concession area.

The Greenex concession states in section 12 that the concessionaire shall ensure that the enterprise be carried out in such a manner that it does not present danger to persons or to the property of third party. Likewise, the concessionaire shall ensure that such pollution nuisances as are a consequence of the operations be limited as much as possible. It may be added that the sanction is suspension of activities until the defects have been remedied.

13.5.7. Concluding remarks.

This survey of various aspects of the relationship between the State and the concessionaire give a mixed impression of a somewhat mixed relationship between the parties. Of course both parties wish that the activities under the concession may bring profit and benefit to all parties involved, and both the State and the private party know that a functional and reliable relationship between the parties is necessary to reach these objectives. The question is then, what type of relationship is it? Is the impression given that of a vise and honorable Sovereign giving something to his always humble servant, or that of a powerful multinational economic giant purchasing certain valuables from a poor and un-skilled vendor? Neither of these two extremes gives an accurate picture, although there are elements of both types of relationship.

The concession documents start ambitiously with preambles with the picture of the independent State, which according to sovereignty and previous legislative Acts of sovereignty grants certain of its rights to a "fortunate" citizen.

But at the other side of the coin, the documents end with binding signatures of the concessionaires. Apparently, the concessions include so many obligations on the part of concessionaire that the State finds it appropriate to achieve binding signatures in order to ascertain the inter partes relationship between the State and the concessionaire.

The concession is also signed by representatives of the State. Probably it is only a matter of tradition, and other acts of sovereignty are signed too by representatives of an authority. But the content of the concession document is only directed to the concessionaire, in contrast to other general acts of sovereignty. Furthermore, general acts of sovereignty might be altered or revoked by a new act, and this happens every day. And since the concessionaire may not transfer any of his concessional rights to third parties without the consent of the State, he has no need for a signature to provide legitimation in relation to third parties. The signatures of representatives of the State may thus be seen as proof of the fact, that the State binding inter partes has undertaken certain obligations in relation to the concessionaire. This would be the only possible reason for the signatures.

The impression of an agreement type of relationship is supported by the numerous agreed definitions, including the determination of the operator. Of course such agreed definitions primarily serve the double purpose of facilitating communication between the parties and avoiding conflict, but the impression is supported.

The concessionaire's role in the concessional relationship is the role of a private party. The role of the other party, the State, described in the concession, may thus determine whether the private party is party to a permit or to a contract. The above survey of various aspects of the relationship also reveal which role the State is undertaking, whether it is the role of a State as such or the role of a private law contracting party.

The concessions include rules on succession in the rights and obligations of the concessionaires. Succession is possible under certain circumstances and conditions; however, this is subject to the State's approval. The possibility of succession may be seen as a contract law element, in the interest of the concessionaire alone. The State also has an interest in the continuation of the activities if the concessionaire fails economically. But the State did not need to include rules to this effect in the concession.

Included in the concession documents there are provisions concerning all types of communication between the parties, for instance concerning plans, approvals, reports etc. Similar rules could be found in legislation, for instance concerning the fisheries sector, and

similar rules could also be found in an international joint venture construction contract.

But then much of the information is confidential, and in the concessions the State has undertaken to maintain this confidentiality in the economic interests of the private party.

The State gains much information due to rules on supervision and inspection. These rules serve highly different purposes, but they are mainly detailed descriptions of how the State in the role of a State expects to exercise its control for any infringements of legislation in force; and how it intends to ascertain whether the activities of the concessionaire cause harm to territory and inhabitants. However, the State also inspects the book keeping, and in so doing exercises a kind of control that resemble a private contract party's control of the payment.

The State plays two roles, that of a private contract party and that of the sovereign state. The administrative procedures of the latter could eliminate many of the rights and obligations undertaken as a contract partner. The concessions, and in particular the Jameson Land concession, thus include indications of the good faith and intentions of the State, whereby the State more or less guarantees that the administrative hindrances[54] shall not be overwhelming in relation to the contractual rights and obligations[55].

Existing rights and obligations of third parties are also touched upon in the concession documents, which explicitly do not alter such rights[56]. This situation is in accordance with the concept of a concession as an inter partes document. Existing rights are protected constitutionally as property rights, and such specific rights may only be reduced by expropriation according to a legislative act and with full economic compensation. The issuance of a concession does not in itself invoke expropriation procedures[57].

But, on the other hand, in mentioning of such rights in the concession documents, the State has indicated its willingness to carry out expropriations if necessary. It is also

---

[54] I.e. the procedures instituted by the Mineral Resources Act, cf. chapter 9, as well as tangenting regulation, cf. chapter 8.3.7.

[55] I.e. the access to economic outcome.

[56] Cf. chapter 9.6.5.

[57] Cf. chapter 8.3.6.

understood that third parties cannot achieve new rights after the issuance of the concession, if such rights are in conflict with the rights allocated to the concessionaire. In other words, the concessions allows the concessionaire a most favoured position to the disadvantage of the activities of various third parties. One may in this relation conclude, that in the fulfilment of its inter partes contractual obligations as a party to the concession, the State has declared its willingness to use its powers in its role as a State in the favour of the concessionaire.

In other words, the concessionaire may also have advantages of having a counter party with dual roles in the relationship.

13.6. THE "LAWYERS LAW" CLAUSES

Above it was concluded that a concession is a result of the State's sovereignty over some land. Possibly, the sovereignty could be characterized as a passive type of State property right among States. The concessions might then be characterized as contractual links to the pure sovereignty, which is in an equilibrium. As mentioned above, the concession documents may look like sovereignty being exercised (a movement or an act of sovereignty) instead of a mere agreement concerning utilization of the passive natural wealth belonging to the sovereign State. However, a concession is not in itself an expression of pure one-sided action by the Sovereign.

If a concession was a pure act of sovereignty, the sovereign state would have power to solve all conflicts under the concession and to terminate the concession by further action of sovereignty. Since a concession is certainly not a pure act of sovereignty, it must include rules, which anticipate future problems relating to the termination of the concessional relationship, and which facilitate the solving of any divergences in the interpretation of rights and obligations under the concession.

13.6.1. Duration and prolongation.

One side of the problem is the length in time of the concessionaire's rights, i.e. the duration and the prolongation of the concession[58].

---

[58] Cf. chapter 9.4.2. A maximum length is provided for by law.

Section 5 of the Jameson Land concession lays down that the exploration period is twelve years from January 1, 1985. The exploration period may be extended for a period of two years at a time up to a total of sixteen years. On application the Minister for Greenland will in accordance with article 2 in the Act on Mineral Resources in Greenland give sympathetic consideration to such an extension of the exploration period and the terms for this.

In section 8 of the Jameson Land concession it is stated that the exploitation period for each exploitation concession is thirty years from the date of the start of production, but this is limited to thirty five years from the date of the approval of production measures. The exploitation period may, however, be extended for a maximum of ten years.

In section 3 of the Greenex concession it is stated that the Greenex concession is effective when granted, and shall expire after 25 years; This is calculated from the date on which the Minister for Greenland grants the concessionaire his approval to the concessionaire's mine development plans. Subject to six months' preceding notice the concessionaire may abandon the Greenex concession effective from the end of any calendar year. At the expiry of the period of 25 years mentioned above, the concessionaire is entitled to an extension of the concession period of a further 25 years subject to such terms and conditions as may be prescribed by the Ministry for Greenland.

It is laid down in section 5 of the Danish License that the license is valid for a term of 6 years from the date of issuance. Extension of the license pursuant to art. 13, par. 2, of the Subsoil Act for the purpose of production is to be granted by the Minister of Energy for the relevant area for a period of 30 years from the date of the grant of the extension.

13.6.2. Relinquishment and surrender.

In relation to relinquishment and surrender of the concession area, it is laid down in section 34 of the Danish License that where the rights under the license are relinquished during the exploration period, such relinquishment shall apply to the entire license area. Where the license has been extended in respect of one or more areas for the purpose of production, the licensee may relinquish the right to any such area upon one year's notice.

In section 11 of the Jameson Land concession it is laid down how the concession area shall be relinquished: 25 % of the area shall be relinquished at the end of year 8 of the exploration period; and a further 25 % of the original area shall be relinquished at the end

of year 10 of the exploration period. The concessionaire retains the exploration rights within the remaining 50 % of the area until the end of year 12 of the exploration period. The concessionaire may surrender an exploitation concession upon 12 months' notice.

From the middle of the 60's practically all new concessional regimes of the world have provided for a gradual relinquishment of the concession areas[59].

13.6.3. Forfeiture and revocation.

The less predictable situations of termination of the concession are included under the rules on forfeiture and revocation.

In section 37 of the Jameson Land concession it is laid down that the concession is forfeited in the event that: A) any provision, condition or order contained in the Act on Mineral Resources in Greenland, in the Jameson Land concession or issued pursuant to the Jameson Land concession is not complied with, B) if the concessionaire has committed an act of fraud in the submission of information to the Ministry, or C) if one or more of the companies participating in the Jameson Land concession go into liquidation or is adjudged bankrupt[60].

If the non-compliance with provisions, conditions or orders contained in the Act on Mineral Resources in Greenland, in the Jameson Land concession or issued pursuant thereto, has been caused by force majeure, the concession shall not be forfeited so long as the non-compliance otherwise causing forfeiture is due to force majeure.

Defaults relating solely to exploration operations according to the concession in areas not covered by an exploitation concession shall not result in forfeiture of any exploitation concession. Defaults relating to an exploitation concession shall only result in forfeiture of the concession in question. Furthermore, the Ministry may grant exemption from the stipulations on forfeiture.

In pursuance of its section 24, the Greenex concession is forfeited in the event that the exploitation operations are discontinued for more than two consecutive years, or in the

---

[59] See Cattan (1967): "The evolution of oil concessions" at pg. 12, and Smith and Wells (1976): "Conflict avoidance in concession agreements" at pg. 56.

[60] These conditions are different from the provisions of the Mineral Resources Act, cf. chapter 9.8.2.

event of non-compliance with any of the provisions laid down in the Mineral Resources Act.

The Greenex concession shall likewise be forfeited in the event of non-compliance with any of the conditions laid down in the Greenex concession or with conditions laid down in agreements related thereto or with orders issued by the Ministry for Greenland, or if any stipulated time limit is exceeded. In the event that exceeding of a time limit is a consequence of matters beyond the control of the concessionaire which it was impossible to avert (force majeure), the time limit shall be extended by a period of time equal to the duration of such matters.

In pursuance of section 35 of the Danish License, the Minister of Energy may revoke the license if any provisions, conditions, or orders contained in the Subsoil Act and in the license or issued pursuant thereto are not complied with, or if incorrect or misleading information is given in an application for a license. If such default, however, can be remedied by the licensee, revocation shall not occur until the Minister of Energy has ordered that the default be remedied within a specified period, and this order has not been complied with.

The Minister of Energy may also revoke the license, if one or more of the holders of the license suspend payments, file notice of involuntary arrangements with creditors, are adjudged bankrupt, go into liquidation or experience any comparable circumstances.

13.6.4. Equipment in the concession area.

Here it is worth mentioning that a solution must be found for the equipment in the concession area upon the termination of a concession. This is an environmental issue, as well as an economic matter in relation to the continuation of successful exploitation activities.

On the termination of the Jameson Land concession for areas not covered by an exploitation concession, the concessionaire is entitled to remove all equipment and all installations which have been used in operations in there. When an area is relinquished during the exploration period and on the termination of an exploitation concession, the Ministry will be entitled, free of charge, to take over, wholly or partly, all facilities, devices and installations with equipment.

In section 4 of the Greenex concession it is laid down that at the termination,

abandonment or forfeiture of the Greenex concession, the concessionaire shall be entitled within a period of three years reckoned from the termination of the Greenex concession to remove all property belonging to him, including also buildings existing in the concession area. Within three months after the termination of the Greenex concession the concessionaire shall have removed anything which may present a potential danger of pollution nuisances or which may entail danger to persons or to property of a third party. In the event that such removal has not been carried out, the Ministry for Greenland shall be entitled to take the necessary steps for removal at the concessionaire's expense.

This part of the provisions of the Greenex concession was supplemented by the agreement of December 13th 1985, whereby a fixed amount for the restoration of the concession area was reserved in the accounts of the concessionaire. This part of the agreement is described in further detail above in the part covering environmental obligations in section 13.4 of this chapter.

In section 37 of the Danish License it is laid down that if the license terminates due to expiry, relinquishment, cancellation or revocation, in respect of either the entire area or part thereof, the State shall be entitled to take over, without consideration, all or part of any facilities, equipment and installation intended for long-term use within the area concerned, as well as any required accessories and materials, including journals and manuals, etc.

At the time the license terminates, the licensee is obligated to ensure that the facilities, etc. which do not belong to the licensee or which are encumbered with other rights in favour of third parties, are released from third party rights of any kind such that they can be assigned to the state without consideration and free of encumbrances.

Upon the termination of the license, the Minister of Energy may require the licensee to remove, within a fixed period, all or part of any facilities, equipment and installations, whether they belong to the licensee or to any other party, which the State does not choose to take over under the above mentioned rules.

13.6.5. Force majeure, hardship and change of circumstances.

Like any other contract or any administrative statutory order, a concession document cannot include stipulations which foresee every new circumstance. The concessions thus include rules on force majeure, hardship and change of circumstances.

Section 2.09 of the Jameson Land concession lays down that if the concession area or

parts thereof ceases to be under the sovereignty of the Kingdom of Denmark, the concessionaire shall respect such change of the status of the area without being entitled to make any claim on the Danish State. The Minister for Greenland will use his best efforts in ensuring that the successor in the sovereignty to the area will respect the rights of the concessionaire granted under this concession.

In section 16 of the Jameson Land concession some indication is given of cases where a reduction of or exemption from royalty may be granted. This may occur, for instance, where a concessionaire's profit margin and costs (including royalty, taxes and duties) undermine his competitiveness on the world hydrocarbon market[61].

In section 30 of the Jameson Land concession it is expressed that in extraordinary circumstances and in cases in which the domestic supply of hydrocarbons runs seriously short, the Ministry may decide that the Danish state will be entitled to purchase the concessionaire's total production of liquid hydrocarbons. The Ministry will finally decide whether or not there are extraordinary circumstances or if there is a serious enough shortage of the supply of hydrocarbons in the realm of Denmark.

The section on forfeiture (section 37) of the Jameson Land concession provides that if the non-compliance with provisions, conditions or orders contained in the Act on Mineral Resources in Greenland, in the Jameson Land concession or issued pursuant thereto, has been caused by force majeure, the concession shall not be forfeited so long as the non-compliance otherwise causing forfeiture is due to force majeure.

The Greenex concession and the Danish License do not include explicit rules referring to force majeure. Similarly, these documents do not include explicit references to requirements of good faith etc. as discussed above. The reason might be that the Greenex Concession and the Danish License documents are less internationalized and to a higher degree implicitly linked to traditional Danish law. In Danish law the problems in relation to force majeure and the good faith issues are regulated by the rules and the principles

---

[61] A provision like this appear as a starting point for solutions of an economic character, in line with one of the main responses to the current crisis in the oil industry advanced by Waelde (1988): "Investment policies in the international petroleum industry - responses to current crisis", chapter 2 in Beredjick and Waelde (1988): "Petroleum investment policies in Developing Countries" Graham & Trotman, London (1988).

provided by the Contract Act[62], art. 33 and 36, as well as by the principles of law of obligations, which to some degree are codified in the Sale of Goods Act[63].

However, the question of force majeure types of situations has been a central issue in several disputes in the Middle East[64]. A government will typically refer to force majeure in connection with otherwise unlawful nationalizations without appropriate compensation[65].

In section 2 of the Danish License it is stated that where the area covered by the Danish License, or any part of the same, is not within, or is withdrawn from, Danish sovereignty under rules of international law, including any international treaties, the Licensee is bound by any resulting restriction of the area, and shall not on this account have any claim whatsoever against the Ministry of Energy or through any other channel against the Danish State.

In relation to changes of circumstances it is worth noting that the concessions examined do not include explicit most-favoured-company and most-favoured-country provisions. A most-favoured-company clause offers the company the option to substitute a certain provision in a concession with the similar provision in another concession later offered to another company in order to achieve a favourable treatment similar to that company. Similarly, the most-favoured-country clause provides the country with the option to substitute with provisions accepted by the concessionaire in other countries. However, such automatic revision clauses are difficult to administer[66].

But clauses of this type might come into prominence in Greenland in the future.

---

[62] Act no. 242 of May 8th 1917, cf. chapter 8.2. above.

[63] Act no. 102 of April 6th 1906, cf. chapter 8.2. above.

[64] For instance, see the Amoco vs. Iran award, 27 ILM 1314 (1988), at pg. 1336, and in particular the award in the dispute between the National Oil Corporation and the Libyan Sun Oil company, 29 ILM 565 (1990).

[65] About nationalization, see Foighel (1963): "Nationalization and Compensation" Stevens & Sons, London.

[66] See Smith and Wells (1976): "Conflict avoidance in concession agreements" at pg. 63.

Recently, the governmental strategy group has stated that the conditions of the Greenlandic concessions must be competitive compared to the conditions offered in other countries in the entire concession period[67].

13.5.6. Applicable law, venue and arbitration.

Other formal rules are included in the provisions on applicable law, venue and arbitration, whereby the procedures of solving conflicts of misunderstanding are instituted. The 1978 Mineral Resources Act included no requirements in this relation. In the 1991 Mineral Resources Act, art. 32 explicitly allows for the application of arbitration. In relation to applicable law, it is worth noting that art. 31 requires the application of Danish law of torts and compensation.

According to section 40.04 of the Jameson Land concession, the concessionaire shall indemnify the Danish state and the Greenland Home Rule authorities for all claims whatsoever which may be made by any third party against the Danish state and the Greenland Home Rule authorities as a consequence of operations under the Jameson Land concession, provided that the concessionaire has been given due opportunity to defend such claims and that the case is determined either by: A) a settlement previously approved by the concessionaire, B) a final judgement, or C) an arbitral award where the party making the claim had a right to arbitrate prior to the occurrence of the damage.

Pursuant to section 43.01 of the Jameson Land concession, the Jameson Land concession is subject to the laws of Denmark and Greenland in force at any time, including EEC regulations in force. Section 45 of the Jameson Land concession contains the arbitration clause, which provide that any dispute will be solved by arbitration. Furthermore, it lays down that the board of arbitration will be seated in Copenhagen and will apply Danish law in making its award. The board of arbitration will, however, lay down its own rules of procedure for the consideration of the case including procedures for obtaining evidence of a technical nature.

According to section 40 of the Greenex concession, the concessionaire is subject to the Danish statutes, orders and regulations existing at the time in question.

In section 39 of the Greenex concession it is laid down that any question which

---

[67] See Raastofforvaltningen for Groenland (1990): "Rapport fra Strategigruppen" pg. 46.

depends upon the discretion or decision of the Ministry of Greenland, shall be finally decided by the Ministry, unless the Greenex concession explicitly grants access to arbitration for the matter in question. The arbitration tribunal has its seat in Copenhagen, and it shall apply Danish law at the making of its award. However, the tribunal lays down its own rules of procedure.

Apparently, neither the parties to the Greenex concession nor the parties to the Jameson Land concession considered the application of international arbitration rules. The Convention on the Settlement of Investment Disputes entered into force on October 14th 1966. The convention instituted the International Centre for Settlement of Investment Disputes, which is sponsored by the World Bank[68]. The centre has been involved in a high number of central arbitral awards concerning Middle East exploitation conflicts, quoted in the previous chapters.

Returning to the supplementary agreement related to the Greenex concession of December 13th, 1985, a further interesting point in relation to the choice of applicable law emerge. Above in this chapter it was described how the Danish authorities by the agreement achieved a preferential right to purchase the shares of Greenex A/S or Vestgron Mines Ltd in the event the shareholder at that time, Cominco Ltd, decided to close the mine in Marmorilik. According to the wording of the initial provisions of these arrangements, section 3.2. of the agreement, this arrangement concerning the preferential rights is "in accordance with Canadian law". It appears quite startling that a sovereign State was prepared to allow of a concessional relationship be governed by legal principles of another State. This provision is a kind of gift to the private party. Of course this is meant to alley the fears of the private party and to put the private party at ease while the State outlines its own rights. Psychologically, it is thus a quite understandable arrangement. But it definitely is a way to solve problems, which is 100 percent contractual in its nature.

In section 20 of the Greenex concession it is laid down that under the provision of the Constitution of the Kingdom of Denmark relating to expropriation of property it may be provided by statute that the concessionaire shall cede wholly or partly what has been gained through the mine operation. It may be added that such clause strictly legally speaking is

---

[68] About the centre and the rules, see for instance Gopal, Gita (1982): "International Centre for Settlement of Investment Disputes" 14 Case W.Res.J.Int'l.L. 591 (1982).

not necessary, and may be characterized as a constitutional reminder to the concessionaire. The government cannot deviate from the provisions of the constitution. Article 73 of the constitution provides that expropriation may take place, but in return for full economic compensation only.

In pursuance of its section 39, the Danish License is subject to the laws of Denmark in force from time to time, including future amendments, if any, of the Act Concerning the Use of the Danish Subsoil, official notices, decrees, and the obligations in force from time to time, which arise from Denmark's membership of the European Economic Community. In section 40 of the Danish License it is laid down that any disputes arising in connection with the license or with the licensee's performance of activities under the license must be resolved pursuant to the laws in force in Denmark and by the Danish courts. The venue is Copenhagen. The above mentioned rules shall not, however, prejudice the right of the Minister of Energy and the licensee to agree, in any particular case, that a dispute might be resolved by arbitration.

13.6.7. Concluding remarks.

It appears reasonable to conclude against the background of this survey of "lawyers' law" clauses, that provisions concerning prolongation, surrender, relinquishment, forfeiture, force majeure, hardship and especially arbitration, applicable law and venue, are clear cut contractual elements in the concessions, and in relation to such clauses, the State and the private party are parties to a contract. The parties are equally free under the contract to use and call upon these provisions.

However, most of these clauses are not fully neutral. For instance applicable law might be Danish law and the place of arbitration might be Copenhagen. The concessionaire could have preferred the law and the place of the main place of business of his parent company. Alternatively, the law and the place of a third country could have been chosen as the neutral choice. The actual choice of applicable law and venue etc. may reflect the most practical solution in relation to geographical considerations and in relation to the number of Danish laws which in any case have to be respected by the concessionaire and by third parties.

The choice of Danish law as applicable law and Danish courts as venue or Danish places of seat of arbitrators etc. may also be seen as the price the concessionaire had to pay

in the negotiations for moving the entire arrangement from the sphere of public law to the sphere of private law.

14. CONCLUSIONS

This piece of academic work started with the assumption that Greenland is a long established, but modern, law regulated society, which, due to the mineral resources and the climate, offers vast possibilities of commercial ventures and risks, however, within stable legislative and contractual frameworks, which are well known legal constructions from Scandinavian and continental law.

It was quite simple to establish in chapter two, that due to the presence of a great variety of minerals, as for example cryolite, zinc, uranium, oil etc., there are interesting commercial possibilities in relation to the Greenlandic subsoil. It was also easy to illustrate that we are speaking of vast possibilities now and in the future, due to the enormous extent of the surface of Greenland. The impression of the future possibilities, when technology allows it, were even considerably enlarged in chapter five, in which the extent of the offshore continental shelf was discussed. The vast economic zone pertaining to Greenland may actually stretch almost as far north as the geographical North Pole, according to the Law of the Sea Convention, which was discussed in chapter 5.2.3.3. above.

The enormous economic involvement required in relation to mineral exploitation in Greenland was also illustrated by means of the problems caused by the climate, i.e. permanent frost, ice blockage at sea, and darkness in winter. Also the issues of lack of landward transportation facilities, the need of power supply and the limited availability of local labour have been touched upon. Enormous investments are thus required before production can begin. It is thus easy to conclude that considerable economic risk is also involved in any commercial adventure. The amounts of money involved in the initial phases of exploration were exemplified by the provisions of the Greenex concession and the Jameson Land concession analyzed in chapter 13.

The first part of the assumption was that Greenland was a long established, but modern, law regulated society. The historical survey of chapter three proved knowledge of history, including old tales of confrontations and hostility in Greenland during the medieval period in Europe. However, since the middle of the 18th century, Greenland has been a land of peace. All of Greenland's inhabitants were converted to christianity a century ago.

The administrative regime of Greenland has developed slowly, but steadily since the 18th century. Step by step Greenland has become a fully democratic society, and several

elections and referendums in Greenland during the middle of the 20th century have further contributed to this development.

The law in Greenland is basically, and in most details, Danish law. Danish law has its roots in the Roman tradition of complex codification. Similarly, all aspects of life in Greenland are considered in legislation, as demonstrated in chapter eight on laws and justice. To the extent legislation does not provide clearly applicable provisions in a given situation, the highly developed jurisprudence of Danish law applies. This was seen in the chapter on offshore exploitation activities, which revealed certain unclear points concerning the applicability of various legislative acts.

Accordingly, it is safe to accept the assumption that Greenland is a well founded, but modern, law regulated society, which offers vast potential for commercial entrepreneurial initiative.

It was expected to encounter greater difficulty in verifying the last part of the postulate that the possibilities are offered within stable legislative and contractual frames, which are well known legal constructions. In order to circumvent the problem and establish the likelihood of truth, four research objectives were formulated in the introductory chapter.

The first objective was to identify the State party to the arrangement in relation to the mineral resources. This identification of the regime's body should include a determination of its objectives and its position of strength, both internally and externally.

The State was found to have a very strong position at the basic level in relation to the rights of a specific individual citizen. All land is administered by authorities and there is no private ownership to subsoil or surface land, cf. chapter 8.3.3. There exist only certain limited rights provided by legislation for occupancy of land for dwelling purposes and use of land for hunting. Any property right may be subject to expropriation in return for compensation. No aboriginal rights were found. Customary hunting takes place, but whether this hunting is pursuant to customary rights or pursuant to legislation was not disclosed, also because the economic value of the rights were assumed to be out of proportion to the value of mineral deposits.

In relation to the strength of the position of the State body in comparison to other States, the supremacy of the State has been recognized by all affected "neighbouring" States. After one trifle sixty years ago, the sovereignty was even more ascertained.

Also the extension of sovereignty into the sea appears to be successful and well

founded in international law.

The system of the regime of the State is fully recognized internationally. The supra–national powers are not exercising direct influence. The European Community does not play a direct legislative role in Greenland, but Greenland does, however, benefit from an affiliated OCT status. This arrangement incidentally entail that the import of minerals from Greenland into the EEC may take place without paying duty.

The United Nations long time ago have recognized and praised the organization of the development of democracy in Greenland, and the UN does thus not interfere with the present way of administration in Greenland.

The administration of Greenland and at least the administration of the Greenlandic mineral resources is to a high degree carried out by authorities of Danish background. However, the administrative regime concerning the mineral resources is based on a joint decision–making power to the Danish state authorities and to the so–called Home Rule authorities in Greenland. This power in practice functions as a reciprocal right of veto to both political authorities within the administrative regime.

It was concluded in chapter 4.5. that the Danish state has the right to the soil of Greenland, and that therefore royalty claims from a third power cannot legally be found. It is the entire Danish administrative system, including the Home Rule authorities, that have the exclusive right to be a party to a concession relating to Greenland. In accordance with international law it was suggested that the concessions now established possess unchanged validity also in the unlikely event of Greenland's independence, because pursuant to the Home Rule Act, the concessions are made with the approval of the 50.000 inhabitants of Greenland. If the concessions are not enforceable at that time, the lack of enforceability is comparable to expropriation, which entail full economic compensation.

The State party was identified as a party with a very strong position in all respects. The relevant authority is the Mineral Resources Administration in Copenhagen.

The second means of establishing likelihood of the stability of law and legislation was to explore some details of the rules of procedure applying to exploitation activities. It was assumed that confidence with the private party and the provision of information at several levels would be of importance. Another sign of stability would be the existence of rules to the effect of avoidance of un–solid and "reckless" concessionaires.

Many details of procedures were expounded in chapters seven and nine. It was found

that there were no major obstacles if a private party wished to obtain a prospecting license in Greenland. However, for the achievement of an exploration concession or an exploitation concession, it is by legislation required that the applicant should show evidence of the necessary financial and technical knowledge. These requirements were exemplified by the Greenex concession and the Jameson Land concession, which both stipulated a number of details of the technical requirements, as well as financial guarantees by means of insurance and economic back-up from parent companies.

In relation to the control of financial capabilities of concessionaires, one may recall from chapter eight, that any mortgage deeds have to be registered by the court of Copenhagen, and in some aspects also by the High Court of Greenland, if the mortgage deeds are to enjoy legal protection.

Furthermore, the concessionaires have to pay considerable fixed area lease fees during the initial years of exploration, and have to be co-operative with the governmental authorities in submitting plans and reports. Companies also have to submit their account balance sheets to the company register every year.

The legislation and the agreements with the concessionaires are made in such a way that non compliance with stipulated conditions by a concessionaire during the initial years of exploration may cause the authorities to refuse an exploitation concession.

When production at an exploitation site is about to cease, the economic involved in restoration of the concession area falls to the concessionaire. In Greenland there are no abandoned mine towns and worthless exploitation installations left by bankrupt concessionaires. The result of negotiation in relation to the termination of the Mesters Vig concession, the Cryolite concession in Ivigtut and the Greenex concession give a good indication of the efficiency of the administrative system.

In other words, if a concessionaire turns out to appear financially insolvent or unstable in general terms, the State party is in a rather strong position to enforce its own solution.

The State has many means of assessing the quality of the concessionaire; for example, the concessionaire has to submit plans and applications for approval at every stage of progress in the exploration and in the development of the exploitation site. Futhermore, contributions to the impression of the concessionaire are gained not only via the channels and means of information provided for in the concessions and in the legislation directly applicable to the mining activities. Because Greenland comprises a society with legislation

and a legal regime with many highly regulatory elements deriving from continental law, many other aspects of the activities of a mining enterprise and its employees are affected by contact with public authorities.

All these information channels and the economic guarantees, combined with a portion of administrative precaution and political rights of veto, make it difficult for a concessionaire to cause unpleasant surprises for the State party. But if such surprises did arise they would have to be remedied by means of supplementary legislation issued by the State for the occasion. Accordingly, one may conclude that the procedural rules of the administration provide a basis for stable legislative frames in relation to exploitation activities of concessionaires.

One side of the coin was unpleasant surprises caused by the concessionaire which could force the State party to remedy the situation through legislation. The other side of the coin, was unpleasant surprises to the concessionaire caused by the State. One could imagine that every issue in the concessional relationship and all impacts had been considered and foreseen, including the extent of damages to the environment and to local inhabitants, as well as the potential of profit to the concessionaire. But then changed public opinion and general awareness of the matter may cause reconsideration within the State administration. In this connection one could imagine new political demands for a bigger share of the cake. This would constitute no small unpleasant surprise to the economic advisers of the concessionaire.

A third objective of the research was thus to establish an indication of the reliability of the governing regime.

Possible local objections were assuaged by means of the establishment of the above mentioned joint decision-making power with right of veto, and by means local economic and practical benefit accruing from the exploitation activities by means of local income taxes and local use of hospitals, airports etc.

As mentioned above there would be legal reason to the survival of the concessional rights of the concessionaires in the unlikely event that part of Greenland became independent from Denmark. However, that discussion is slightly beyond the objectives of this present discussion, which is the legal reliability of the present regime.

The roots and the development of the governing regime, and in particular the legal regime applying to mineral exploitation, have been discussed in detail in chapters seven,

nine and eleven. Many details of law and of administrative functions came into existence several decades ago; moreover, the entire system has evolved into a regime with a high degree of complexity, which, however, is used and respected. The age and details of law indicate a degree of reliability of the system.

Rights given by concession through the Mineral Resources Administration are superior to land regulations and other regulations issued by Greenlandic authorities. The issue is thus the reliability of the Danish State.

One blemish on the reputation of the State was mentioned in chapter 11. It was the original sole and exclusive concession of 1962 comprising hydrocarbons in the entire subsoil of Denmark and the continental shelf of Denmark. The concession, issued by royal decree, was amended by agreements between the concessionaire and the Minister for Energy in 1976 and 1981, whereby most of the concession area was relinquished. The agreements were made against the background of certain political demands for expro-priation without compensation for future loss of profit. Expropriation did not take place, but the concessionaire was forced to give up areas for which he did not have actual plans for exploration or exploitation.

This complication and the procedure of solving the problem, however, also reveal very positive sides of Danish administration. The administration preferred to negotiate an agreement, instead of trying to repeal or amend the original Decree by a new sovereign Decree. Likewise, the administration did not go to the courts in an attempt to have the concession cancelled on the basis of a change of circumstances and laesio enormis according to contract law.

A certain sense of fair play may be witnessed on the part of the administrative authorities in their dealings in relation to the administration of Greenlandic exploration and exploitation activities. In the late seventies, a number of oil companies carried out oil exploration off the shores of West Greenland. However, the drilled holes in the continental shelf were dry, and the oil companies stopped their exploration activities, whereby the plans scheduled in the concessions were broken off. The concessions included work obligations and financial guarantees. The fixing of a lump sum compensation to the State was settled by negotiation in which the State received an amount of money to cover administrative costs. Interestingly, the amount was modest compared to the potential costs of the remaining, unfulfilled exploration obligations.

Another issue was the political demand for the adaption of a supplementary concession agreement relating to royalty in the Ivigtut cryolite concession after the State's sale of its shares in the concessionaire following after the later realization that the quarry had once again become profitable for a short period. The issue simply faded away, probably because of the limited degree of profitableness.

One may also mention the fact that Arco maintained a preferential position in relation to Jameson Land because of its control in The Northern Mining Company, which held an old concession in the area. The Northern Mining Company upheld its concession in the area for more than twenty years after the closure of the mine. The State could have revoked that concession long before.

This behavior on the part of the State administration may be seen as an attempt to maintain "friendly relations". In particular this is much to do with the sense of obligation and confidence in relation to the concessionaires, with whom the State has entered into concessional arrangements. The State apparently wishes to have an attractive image in this respect, and one may conclude that this contributes much to the impression of a reliable regime, seen from the concessionaires' point of view. The behavior of the State, however, is not only the result of a wish to create an attractive image as host for exploitation activities.

The fourth aim was to check the reliability of the legal system by examining the legal character of the concessions. The interest here in classifying or determining the nature of a concession is based on the impact; if a concession may be mainly regarded as a gift or a donation from a sovereign to an individual, then the sovereign may take it back in the same manner through to the power of sovereignty. If the concession is mainly a contract between two parties, then the rights of both parties are protected by contract law and contractual principles deriving from Roman law.

The importance of the classification may be exemplified in the following manner. If a new legislative act affects only one enterprise, it is quite reasonable to characterize the intervention as expropriation, and in this case the concessionaire may claim compensation according to art. 73 of the Danish constitution. But if an act applies to a considerable number of enterprises, it is more difficult to characterize the intervention as expropriation. In that case, the protection of the concessionaire may only be found in the law of contract. The concessionaire thus has to claim that his concession included an agreement concerning

certain issues, for instance concerning details of the allocation of the economic outcome of the activities.

Contributions to the disclosure of the legal nature of the concessions may be found in the Government's own description of the situation, the appearance of the concessions and the rights and obligations included therein, as well as possible links and resemblances to administrative law and to contractual practice.

By acts of sovereignty, namely by the Continental Shelf Act and by the Mineral Resources Acts for Greenland of 1935 and 1965, the State explicitly stated that the Danish State owns the soil, and accordingly, the State may regard itself as proprietor of the minerals. This is in itself not decisive; but it is an interesting element in the picture. Another interesting feature is the fact that the State administration and politicians use the terms concession, concession–agreement, agreement; whereas they never use terms like statutory order or administrative statute in this connection.

Prima facie; the front pages of the concession documents appear as the beginning of acts of sovereignty of the State. But a closer look at the texts disclose that the first provisions of the concessions determine the content of the State's main performance under the concession. The State provides a right to carry out certain activities in relation to the utilization of the State's properties. Furthermore, the right include a promise of exclusivity.

In return for this right, it is presupposed that the concessionaire is willing to undertake the burdens of the considerable economic risks in the investment in exploration and development, without any certainty of profit. The undertaking of the initial risks entail advantages to the State by means of the construction of local facilities and by means of economic activities, which at the secondary level entail public revenue.

When production has started, the State gains revenue directly according to the concessions, but already before this stage is reached, the State has gained on the accessory counter performances from the concessionaire by means of employment, education and development. Furthermore, the supply of raw materials supports the independence of the State. The accessory performances are thus of great importance to the State, as they strengthen and consolidate the wealth of the State. Both the State and the private party have an interest in the success of the exploitation, and the State has much more than direct economic benefits to gain.

The concessions include rights and obligations conferred on both parties, and

accordingly, the concessions are signed by both parties. In other words, the State has recognized that both parties, inter partes, have undertaken certain obligations.

Existing rights and obligations of third parties are also touched upon in the concession documents, which explicitly do not alter such rights. This situation is in accordance with the concept of a concession as an inter partes document. The reason for the inclusion of provisions concerning third parties is to express the most favoured position of the concessionaire in the event of conflict. It was concluded in chapter 13.5. that the State has thereby declared its willingness to use its powers in the role of a State in favour of the concessionaire. It does this in order to promote the fulfilment of the inter partes contractual obligations between the State and the concessionaire.

The concessions also touch upon the possibility of expropriation of the concessionaires' rights according to the constitution of Denmark. In return for full compensation and by a legislative Act it is possible to expropriate property rights pursuant to art. 73. of the Constitution. Implicitly, the State thereby has acknowledged that it by the concessions it cedes part of its property rights to the concessionaires in a contractually binding way.

Furthermore, the inclusion into the concession documents of typical contract clauses on arbitration, force majeure, venue and applicable law underlines the legal character of the concessions. Further evidence of this is provided by the example, where Canadian law was agreed as applicable law.

It now appears safe to assume as a conclusion, that the Danish State regards and treats the concessions in Greenland as binding contracts ruled by principles of private law.

The question of stability of the legislative and contractual frames is then in the end in the hands of the arbitrators and the Danish courts. There is no reason to doubt the impartiality of the Danish courts. The courts are independent in accordance with the three division of powers pursuant to the theories of Montesquieux.

The Norwegian Supreme Court in the Phillips/Ekofisk royalty case ascertained its willingness to apply contractual principles in relation to a North Sea hydrocarbon license, and thus found in favour of the concessionaire and against the State. The Danish courts must feel compelled to do so too, also because the Norwegian exploitation regime appears a little less contractual when seen from a general point of view.

The Greenex concession and the Jameson Land concession, as well as some of the old North Sea licenses, were individually negotiated between the State and the concessionaire.

Later the allocation of exploration and exploitation rights in the North Sea has been carried out through bidding rounds on basis of standard documents.

If the State one day is forced to claim that the standard bidding round concessions are standard permits issued by the sovereign State, it is very likely that the courts will treat the concessions as "contrat d'adhesion", and interpret the texts in the favour of the other party. The courts are usually pleased to let both parties save their face, and with natural precaution, the courts abstain from making too prejudicial a statement. So although the court considers it so, it nonetheless stop short saying a given concession might be a "contrat d'adhesion". But still this starting point reflects a sound principle; namely in case of doubt to interpret a written text in favour of the party who has not written it; the principle of "in dubio contro stipulatorem".

However, one must here remember that the classification of concessions as contracts is not purely to the advantage of the concessionaires and to the disadvantage of the State. For instance, the State does not have to comply with the ordinary rules of administration laid down in legislation and general practice in the field of administrative law. The Ombudsman may not be competent to look into the material problems of the concessions. The State does not have to treat Concessionaire A in the same manner as Concessionaire B, etc.

We have now reached the point where it appears reasonable to conclude that the thesis is verified, or at least, the likelihood of the truth has been established in relation to the postulate that Greenland is a long established, but modern, law regulated society, which, due to the mineral resources, offers vast possibilities of entrepreneurial adventures, however, within stable legislative and contractual frames, which are well known legal concepts deriving from Scandinavian and continental law.

The connection with legal concepts and legal regimes in Scandinavia, at the European continent and the elements of legal experience from other parts of the world lead to the fifth aim of the research. The fifth aim was of a general or global nature.

From these considerations, several lessons of wide interest may be drawn related to possible means of legal regulation of non-living resources in territories with semi-independent status, and the possible means of legal regulation with respect to resources in sparsely populated areas with severely difficult problems caused by climate.

The legal experience gained here in relation to exploitation could be of use in relation

to exploitation activities in Northern Scandinavia, as well as in the Norwegian dependencies.

The concept of a joint decision-making power with reciprocal rights of veto could be of interest in many places of the world.

The application of theories of aboriginal rights on the Greenland case may have led to further development of these theories. These theories and the development of Greenland also offer fresh perspectives on colonialism and rights of colonialism.

The application of the Law of The Sea Convention and general principles of continental shelf rights to the waters surrounding Greenland also provide new insights in relation to the Arctic Sea and the North Pole.

This dissertation has hopefully contributed to the international and transnational law of concessions. Because the Greenlandic concessions may be regarded as contracts, it is quite possible that the traditions and conditions of the oil companies and the mining companies may have led to the incorporation of common law contractual traditions in the concessions. Also one may possibly find traces of legal practice arising out of oil concessions in the Middle East. It would be a far too extensive burden to attempt to verify this assumption here, but the assumption leads to the possibility of using the legal conclusions of this dissertation to address problems arising in such concessions.

One thing is certain, a concession is no longer a concession in the Latin sense of the word. A concession is a long-term relational contract. And like under any other long-time living contract, the parties to the concession over time have to agree to adjustments according to unforeseeable changes of circumstances, if they want their contract and their external positions of images to survive.

BIBLIOGRAPHY

Alfredsson, Gudmundur S. (1982): "Greenland and the right to Self- determination" 51 NTfIR 139 (1982).

Andenaes, Johs. (1976): "Statsforfatningen i Norge", 4.ed., Tanum-Norli, Oslo (1976).

Andersen, Poul (1965): "Dansk Forvaltningsret", 5. ed., Gyldendal, Copenhagen (1965).

Asante, Samuel K.B. (1979): "Restructuring Transnational Mineral Agreements" 73 Am.J.Int.L. 335 (1979).

Badura, Peter (1982): "Wirtschaftsverwaltungsrecht" in von Münch: "Besonderes Verwaltungsrecht, 6. ed., Walter de Gruyter, Berlin -New York (1982).

Bak, Arne Gaard (1978): "Atlashaandbog over Groenland" Copenhagen (1978).

Bak, Ove (1981): "Nanortalik" Umanak, Greenland (1981).

Bech, Svend Cedergreen (1977): "Reformation og Renaessance 1533 - 1596" 6 Politikens Danmarks Historie 11 (1977).

Bentham, R.W. (ed)(1985): "The law of hard Minerals in 1985" University of Dundee (1985).

Bentzon, Agnete Weis (1978): "Ret og Reformer i Groenland" 14 TfGR 33 (1978).

Bercusson, Brian (1985): "Economic Policy: State and Private Ordering" DOC IUE 21/85 EUI Colloquium Papers, Firenze (1985).

Beredjick, Nicky and Waelde, Thomas (ed)(1988): "Petroleum Investment Policies in Developing Countries" Graham & Trotman, London (1988).

Berlin, Knud (1932): "Danmarks Ret til Groenland", Nyt Nordisk Forlag - Arnold Busck, Copenhagen (1932).

Bernt, Jan Fridthjof (1980): "Striden om oljeutvinnings-konsesjonenes rettslige status - noen forvaltningsrettslige og statsrettslige grunnproblemer", Lov og Rett 323 (1980).

Bernt, Jan Fridthjof (1981): "Avtaler med stat og kommune", Universitetsforlaget, Bergen (1981).

Blitzer, Charles. R. et al (1984): "Risk bearing and the choice of contract form for oil exploration and development" 5 The Energy Journal 1 (1984).

Braekhus, Sjur (1975): "Legal Evaluation of hitherto granted Petroleum Production

Licences on the Norwegian part of the Continental Shelf", mimeo, Oslo (1975).

Broensted, Henning (1970): "Groenlands rets- og politivaesen" 30 Trap 246, Copenhagen (1970).

Broensted, Henning (1978): "Lov og ret" Bogen om Groenland 148, Copenhagen (1978).

Broensted, Henning (1983): "Groenland" 12 Juridisk Formularbog 946, Juristforbundet, Copenhagen (1983).

Broested, Jens (1980): "Oprindelige folks ejendomsret efter Felix Cohens Beskrivelse" Institut for Eskimologi, Copenhagen (1980).

Broested, Jens (ed.)(1983): "Urfolksret i Norden" Institut for Eskimologi, Copenhagen (1983).

Bull, Edvard (1979): "Klassekamp og Fellesskab 1920 – 1945" 13 Mykland: Norges Historie 9, Oslo (1979).

Burling, James S.(1982): "United States Minerals Policy – A proposal to Revitalize the Exploration and Development of Domestic Mineral Resources" 24 Ariz.L.R. 881 (1982).

Cameron, Peter D. (1984): "North Sea Oil Licensing: Comparisons and Contrasts" 3 Oil and Gas Law Taxation Review 99 (1984).

Castberg, Frede (1947): "Norges Statsforfatning" 2.ed. Arbeidernes Aktietrykkeri, Oslo (1947).

Castberg, Frede (1955): "Innledning til Forvaltningsretten", 3. ed., Akademisk Forlag, Oslo (1955).

Castberg, Frede (1964): "Norges Statsforfatning II", 3. ed., Universitetsforlaget, Oslo (1964).

Cattan, Henry (1967): "The law of Oil Concessions in the Middle East and North Africa", Oceana, New York (1967).

Christrup, Henrik (1976): "Retlige problemer i forbindelse med efterforskning og indvinding af olie og gas paa den groenlandske kontinentalsokkel" 12 TfGR 65 (1976).

Cohen, Felix (1947): "Original Indian Title" 32 Min.L.R. 28 (1947).

Colson, David A. (1989): "The evolving antarctic legal regime" 83 Am.J.Int.L. 605 (1989).

Cowles, Ronald V. (ed)(1984): "World Coal Mining Law. A comparative Survey" International Bar Association (1984).

Cramer, Thomas (1982): "The Sami-people in the sight of Swedish law" 51 NTfIR 44

(1982).

Crommelin, Michael (1981): "The legal character of petroleum production licenses in Australia" in Daintith (ed): "The legal character of petroleum licences: A comparative study", University of Dundee (1981).

Crommelin, Michael (1984): "A New Era of Concessions? The Government Agreement in Australia", International Energy Law, pp. 693–716, International Bar Association (1984).

Cumming, Peter A. & Mickenberg, Niel H. (1972): "Native Rights in Canada" 2.ed., Toronto, Canada (1972).

Daintith, Terence C. (1978): "European Offshore Petroleum Conference" (24. – 27. Oct. 1978) mimeo (1978).

Daintith, Terence C. (ed.)(1981): "The legal character of petroleum licences: A comparative study", University of Dundee (1981).

Daintith, Terence C. & Willoughby, Geoffrey (ed.) (1984): "Manual of United Kingdom Oil and Gas Law", Sweet & Maxwell, London (1984).

Daintith, Terence C. (1986): "Mining Agreements as Regulatory Schemes" AIW Paper no.6, International Conference: Mining Ventures in Developing Countries, AIW–Institut, Frankfurt a.M. (1986).

Dalgaard–Knudsen, Frants (1987a): "Exploitation Concessions: Contracts or Permits?: Contributions from the Norwegian Phillips/Ekofisk case", 5 J.E.R.L. 165 (1987)

Dalgaard–Knudsen, Frants (1987b): "Udvindingskoncessioners retlige kvalificering" Marius no. 142, Oslo (1987).

Dalgaard–Knudsen, Frants (1987c): "Mines and Quarries in Denmark" in European Environmental Yearbook, 311, DocTer International U.K., London (1987).

Danmarks Statistik (1989): "Statistisk Aarbog 1989" Danmarks Statistik, Copenhagen (1989).

Date–Bah and Makbul Rahim (1987): "Promoting Petroleum Exploration and Development – Issues for government" in Khan (ed): "Petroleum Resources and Development" Belhaven Press, London (1987).

Davis, Jerome D. et al (1984): "Offentlig styring af olie–gasaktiviteter I Groenland", Statens Samfundsvidenskabelige Forskningsraad, Aarhus (1984)

Day, Stuart (1983): "Indian Law – Tribal Authority" 18 L.W.L.R. 539 (1983).

Delaume, Georges R. (1983): "Transnational Contracts – Law and Practice" Oceana, New York (1983).

Derry, T.K. (1973): "A history of modern Norway 1814 – 1972" Clarendon Press, Oxford UK (1973).

Duez, Paul & Debeyre, Guy (1952): "Traité de Droit Administratif", Paris (1952).

Duncan, Thomas H. (1982): "Oil Shale Mining Claims: Alternatives for resolution of an Ancient Problem" 19 P.L.R.L.D. 328 (1982).

Durante & Rodino (1983): "Western Europe and the development of the Law of the Sea" Oceana, New York (1983).

Eckhoff, Torstein (1984): "Forvaltningsrett", 2. ed., Tanum–Norli, Oslo (1984).

"Ekspropriation af Olien og Gassen – betingelser og konsekvenser" Forlaget Roede Hane, Copenhagen (1981).

Ellitsgaard–Rasmussen, K. (1970): "Oekonomisk Geologi" 30 Trap 51 Copenhagen (1970).

Ellitsgaard–Rasmussen, K. (1978a): "Geologi og Mineraludnyttelse" Bogen om Groenland 22, Copenhagen (1978).

Ellitsgaard–Rasmussen, K. (1978b): "Generel orientering / statusrapport vedroerende raastoffer i Groenland" Julianehaabkonferencen, Ministeriet for Grønland, Copenhagen (1978).

Engel, Uggi (1981): "The legal character of the Danish Sole Concession" in Daintith (ed): "The legal character of petroleum licences. A comparative Study" University of Dundee (1981).

Espersen, Ole (1978): "Responsum" Bet. 837, vol. 2. Schultz, Copenhagen (1978).

Falkanger, Thor (1986): "Eierraadighet og Samfunnskontroll", 3. ed., Universitetsforlaget, Oslo (1986).

Falkner, R.P. (1984): "The Contractual Powers and Liabilities of the Crown and State participation in petroleum development",
14 Victoria University of Wellington Law Review 75 (1984).

Fauchille, Paul (1922): "Traité de Droit International Public" Rousseau, Paris (1922).

Fischer, Peter (1988): "A collection of international concessions and related instruments" vol. 7, Oceana, New York (1988).

Fisker, Joergen (1980): "Pamiut Frederikshaab" Umanak, Greenland (1980).

Fleischer, Carl August (1976): "Oil and Svalbard" 45 NTfIR 7 (1976).

Fleischer, Carl August (1979): "The Northern waters and the new Maritime Zones" 22

GYIL 100 (1979).

Foighel, Isi (1964): "Nationalization and Compensation", Stevens and Sons Ltd, London (1964).

Foighel, Isi (1979a): "Home Rule in Greenland" 48 NTfIR 4 (1979).

Foighel, Isi (1979b): "Groenlands Selbstverwaltung" 22 GYIL 274 (1979).

Foighel, Isi (1979c): "Groenlands Hjemmestyre" 113 UfR B 89 (1979).

Foighel, Isi (1980): "Home Rule in Greenland. A framework for local autonomy" 17 CMLR 91 (1980).

Franck, Thomas A. (1988): "Legitimacy in the International System" 82 Am.J.Int.L. 705 (1988).

Frihagen, Arvid (1979a): "Studier i Oljerett, Beregning af Royalty", Oljerettsfondet, Bergen (1979).

Frihagen, Arvid (1979b): "Vilkaar ved utvinningstillatelser m.v.", Oljerettsfondet, Universitetsforlaget, Bergen (1979).

Frihagen, Arvid (1984): "The legal frame and standing of the Chinese first round contracts", Rapport fra det Sjuvende aarlige Bergenske Oljerettssymposium, Bergen (1984).

Frihagen, Arvid (1985): "The Ekofisk Royalty Case", 3 Journal of Energy and Natural Resources Law 121 (1985).

Frihagen, Arvid (1986): "Current developments. Norway", 4 Journal of Energy and Natural Resources Law 203 (1986).

Friis, Aage (ed.)(1941): "Schultz Danmarkshistorie" J.H. Schultz Forlag, Copenhagen (1941 – 1943).

Fritzsche, Michael (1981): "Fiscal Regime" in Schanze et al "Mining Ventures in developing countries, Vol. II", Metzner, Frankfurt a.M. (1981).

Gad, Finn (1970a): "History of Greenland" vol. I, C. Hurst & Company, London (1970).

Gad, Finn (1970b): "Fra Nordbotidens slutning til nutiden 1500 – 1950" 30 Trap 352 (1970).

Gad, Finn (1973): "History of Greenland" vol. II, C. Hurst & Company, London (1973).

Gage, Charles Q. (1984): "Drafting a contract mining agreement" 86 W.Va.L.R. 821 (1984).

Gammeltoft-Hansen, Hans et al (ed)(1982): "Danish Law. A general Survey" G.E.C. Gads Forlag, Copenhagen (1982).

Gerdes, Soreren & Serup, Michael (1989): "Nogle betingelser for alderstidshaevd" 123 UfR B 67 (1989).

Germer, Peter (1978): "Responsum" Bet. 837, vol. 2., Schultz, Copenhagen (1978).

Germer, Peter (1982): "Difficultes et inegalites de traitement susceptibles d'etre rencontrees dans l'application du droit minier en vigueur en Danemark" Not published report to the EC Commission, Aarhus, Denmark (1982).

Germer, Peter (1989): "Statsforfatningsret" I-II, Juristforbundets Forlag, Copenhagen (1988-1989).

Gilmore, William C. (1984): "The Newfoundland continental shelf dispute in the Supreme Court of Canada" 8 Mar.Pol. 323 (1984).

Gomard, Bernhard (1988): "Almindelig kontraktsret" Juristforbundets Forlag, Copenhagen (1988).

Goodrich, Hambro & Simons (1969): "Charter of the United Nations" Columbia University Press, New York and London (1969).

Gopal, Gita (1982): "International Centre for Settlement of Investment Disputes" 14 Case Western Reserve Journal of International Law 591 (1982).

Grahl-Madsen, Atle (1980): "Oekonomisk sone rundt Jan Mayen" 49 NTfIR 12 (1980).

Grotius, Hugo (1690): "De Imperio Summarum Potestatum Circa Sacra" Frankfurt am Main 1690 / Scantia Verlag Aalen, Federal Republic of Germany (1970).

Guldberg, T. (1944): "Internationale koncessioner. Et internationalt-finansretligt problem" 13 Nordisk Tidsskrift for International Ret 42 (1944).

Gulloev, Hans Chr. (1978): "Kampen om Sjaelene" Nationalmuseet, Copenhagen (1978).

Gulmann, Claus et al (1989): "Folkeret" Juristforbundets Forlag, Copenhagen (1989).

Gunnarson, Gunnar (ed.)(1978): "De islandske sagaer" 2.ed., Gyldendal, Copenhagen (1978).

Harhoff, Frederik (1979): "Groenland og De Europaeiske Faellesskaber" 16 Retfaerd 74 (1979).

Harhoff, Frederik (1982): "Det groenlandske hjemmestyres grund og graenser" 116 UfR B 101 (1982).

Harhoff, Frederik (1983): "Greenland's withdrawal from the European Communities" 20 CMLR 13 (1983).

Harhoff, Frederik (1987): "Dansk Rets gyldighed i groenlandske og faeroeske saeranliggender" 121 UfR B 347 (1987).

Harhoff, Frederik (1988): "Constitutional and International Legal Aspects of Aboriginal Rights" 57 NTfIR 289 (1988).

Hawdon, David (ed)(1989): "Oil Prices in the 1990's" MacMillan, Basingstoke (1989).

Hertz, Ole (1977): "En oekologisk undersoegelse af minedriftens virkninger for fangerne i Uvkusigssat" Kragestedet, Vedbaek, Denmark (1977).

Hesselbjerg, Erik (1976): "The start of oil exploration in Greenland" 45 NTfIR 19 (1976).

Himebaugh, Anita Gefreh (1983): "An overview of oil and gas contracts in the Williston Basin" 59 N.Da.L.R. 7 (1983).

Huber, Ernst Rudolf (1954): "Wirtschaftsverwaltungsrecht I-II", 2. ed., J.C.B. Mohr - Paul Siebeck, Tübingen (1954).

Ingram, Henry & Lawrence, John (1984): "Contract Mining Agreements" 86 W.Va.L.R. 853 (1984).

Jaenicke, Guenther et al (eds)(1988): "International Mining Investment" Vol. XI (Studies in Transnational Law of Natural Resources) Metzner, Frankfurt a.M. (1988).

James, Alan (1986): "Sovereign Statehood" Allen & Unwin, London (1986).

Illum, Knud (1976): "Dansk Tingsret" (3. ed. by Vagn Carstensen) Juristforbundets Forlag, Copenhagen (1976).

Jensen, Hans (1943): "Den politiske udvikling mellem verdenskrigene 1920 - 1939" 6 Schultz Danmarkshistorie 157. (1943)

Joergensen, J. Balslev (1970): "Antropologi" 30 Trap 290.(1970)

Kaasen, K. (1984): "Norway - royalty payment terms", 3 Journal of Energy and Natural Resources Law 308 (1984).

Karnov (1978): "Karnovs EF-Samling" Karnovs Forlag, Copenhagen (1978.)

Karnov (1990): "Karnovs Lovsamling" (12. ed.) Karnovs Forlag, Copenhagen (1990).

Kelly, Daniel G. jr. (1975): "Indian title - The rights of American natives in land they have occupied since time immemorial" 75 Col.L.R. 655 (1975).

Khan, Kameel I.F.(ed)(1987): Petroleum Resources and Development: economic, legal and policy issues for developing countries" Belhaven Press, London (1987).

Kirchner, Christian et al (eds)(1979): "Mining Ventures in Developing Countries, Vol. I, Interests, Bargain Process, Legal Concepts" (Studies in Transnational Law of Natural Resources) Metzner, Frankfurt a.M. (1979).

Krueger, Robert B. & Moyer, Craig A.(1982): "Trends in Arrangements for the Development of Alaskan Petroleum Resources" 12 U.C.L.A.-Alaska L.Rev. 1 (1982).

Kuehne, Gunther (1986): "Oil and Gas Licensing: Some Comparative United Kingdom – German Aspects", 4 Journal of Energy and Natural Resources Law 150 (1986).

Lachmann, Per (1985): "I Dag er Groenland uden Torsk og EF" Politikens Kronik February 1st., Copenhagen (1985).

Laubadére, André de et al (1988): "Traité de Droit Administratif", 9. ed., Paris (1988).

Leger, James St. (1962): "The Etiamsi Daremus of Hugo Grotius" Romae, Italy (1962).

Lund, Hans (1941): "Under forholdet mellem konge og adel 1533 – 1588" 2 Schultz Danmarkshistorie 579.)1941)

Mangore, Gerard (ed)(1977): "Energy policies of the World" Elsevier, New York (1977).

Martens, Gunnar (1988): "Administration in Greenland. A limitation to Autonomy" 57 NTfIR (1988).

Mathiassen, Joergen (1974): "Aftaler i forvaltningsretten", Juristforbundets Forlag, Copenhagen (1974).

Mattox, William G. (1973): "Fishing in West Greenland 1910 – 1966" C.A Reitzels Forlag, Copenhagen (1973).

Maxfield, Peter C. (1983): "Tribal Control of Indian Mineral Development" 62 Or.L.R. 49 (1983).

McGill, Stuart C. (1984): "Issues for governments when formulating mineral agreements" 8 Materials and Society 115 (1984).

McNamara, Philip (1982): "The Enforceability of Mineral Development Agreements", 5 The University of New South Wales Law Journal 263 (1982).

Mestad, Ola (1985): "Statoil og statleg styring og kontroll", Marius no. 105, Nordisk Institutt for Sjoerett, Oslo (1985).

Mestad, Ola (1986a): "Hoegsterettsdommen i Produksjonsavgifts-terminsaka", Marius no. 118, Nordisk Institutt for Sjoerett, Oslo (1986).

Mestad, Ola (1986b): "Bruk og Endring av Konsesjonsvilkaar", Marius no. 121, Nordisk Institutt for Sjoerett, Oslo (1986).

Mikesell, Raymond F. et al (1987): "The World Mining Industry: Investment Strategy and Public Policy" Allen & Unwin, London (1987).

Mineral Resources Administration (1984): "Baggrundsnotat vedr. Jameson Land Koncessionen" Copenhagen (1984).

Ministeriet for Groenland (1978): "Konferencen vedroerende Mineralske Raastoffer i Groenland" Quqortoq (Julianehaab, Juni 1978), Copenhagen (1978).

Moeller, Axel (1925): "Folkeretten" Gad, Copenhagen (1925)

Moeller, J. Kisbye (1984): "Det groenlandske retsvaesen" 118 UfR 401B (1984).

Molde, Joergen (1982): "The status of Ice in International Law" 51 NTfIR 165 (1982).

Mommsen, Wolfgang (1980): "Theories of Imperialism" Weidenfeld and Nicolson, London (1980).

Mosler, Hermann (1948): "Wirtschaftskonzessionen bei Änderungen der Staatshoheit. Eine völkerrechtliche Studie zum Hoheitswechsel und zur Hoheitsausübung auf fremdem Staatsgebiet", Stuttgart (1948).

Mulack, Günter (1972): "Rechtsprobleme der Erdölkonzessions–abkommen im Nahen Osten", Institut für Völkerrecht, Göttingen (1972).

Mykland, Knut (ed.)(1979): "Norges Historie" J.W. Cappelens Forlag A.S., Oslo (1979).

Nayar, M.G. Kaladharan (1974): "Self–Determination: The Bangladesh Experience" 7 HRJ 231 (1974).

Nielsen, Karen Marie Pagh & Larsen, Finn Breinholdt (1985): "Groenlandsk raastofpolitik – groenlandsk indflydelse" 17 Politica 96 (1985).

O'Connell, D.P. (1956): "The Law of State Succession", Cambridge (1956).

Odberg, Per (1982): "Beskytter Grunnlovens § 97 bestaaende rettigheder?", Den Norske Advokatforening, Oslo (1982).

Oldendow, Knud (1945): "Groenlands Fremtid", Nyt Nordisk Forlag Arnold Busck, Copenhagen, (1945).

Olmstead, Cecil J. et al (1984): "Expropriation in the Energy Industry: Canada's Crown Share Provision as a violation of International Law" 29 McGill Law Journal 439 (1984)

Olrik, Joergen (1941): "Rigets genrejsning og Kalmar Unionen 1340 – 1439" 2 Schultz

Danmarkshistorie 135.(1941)

Page, Alan C. (1982): "Transnational Mining Contracts" in Horn & Schmitthoff (ed): "The transnational law of international commercial transactions", Vol. 2, Kluwer, Deventer (1982).

Perham, Margery (1961): "The colonial Reckoning" Collins, London (1961).

Petersen, E. Ladevig: "Norgesparagraffen i Christian III's haandfaestning" 12 His.Tid. vol. VI.

Petersen, Finn (1975): "Groenlandssagens behandling i FN 1946 – 54" Odense Universitetsforlag, Odense, Denmark 1975.

Petersen, Hjalmar (ed.)(1978): "Bogen om Groenland" (2. ed.) Politikens Forlag, Copenhagen (1978).

Pharand, Donat (1988): "Arctic waters in international law" Cambridge University Press, Cambridge (1988).

Pontoppidan, Niels (et al., ed.)(1983): "Juridisk Formularbog" (12. ed.) Juristforbundets Forlag, Copenhagen (1983).

Raastofforvaltningen for Groenland (1990): "Rapport fra strategigruppen vedroerende mineralske raastoffer i Groenland" Raastofforvaltningen for Groenland, Copenhagen (1990).

Rasmussen, Knud (ed.)(1981): "Inuit Fortaeller" vol. I–III, Bogan, Lynge, Denmark (1981).

Reid, Robert S. (1974): "The Canadian claim to sovereignty over the waters of the Arctic" 12 CYIL 114 (1974).

Richardson, Elliot L. (1988) "Jan Mayen in Perspective" 82 Am.J.Int.L. 443 (1988).

Rosenmeyer, Kjeld (1975): "Soeret" Akademisk Forlag, Copenhagen (1975).

Ross, Alf (1966): "Dansk Statsforfatningsret" (2. ed.) Nyt Nordisk Forlag, Copenhagen (1966).

Ross, Alf (1980): "Dansk Statsforfatningsret", 3. ed. v/ Ole Espersen, Nyt Nordisk Forlag – Arnold Busck, Copenhagen (1980).

Roenne, Anita & Budtz, Michael (1984): "Den retlige regulering af efterforskning og indvinding af olie og gas fra Danmarks undergrund", Ugeskrift for Retsvaesen, afd. B, pg. 369 (1984).

Roenne, Anita (1988): "Offentlig regulering af olie og naturgasvirksomheden i Danmark" Marius no. 149, Nordisk Institut for Soeret, Oslo (1988).

Roenne, Anita (1990) in Blume, Peter et al: "Retlig Regulering" Akademisk Forlag, Copenhagen (1990).

Sawicki, Jerzy (1981): "Lov om Mineralske Raastoffer i Groenland" Institut for Offentlig Ret, Aarhus, Denmark (1981).

Schanze, Erich et al (ed)(1981): "Mining Ventures in Developing Countries, Vol. II, Analysis of project agreements" (Studies in Transnational Law of Natural Resources) Kluwer, Deventer / Metzner, Frankfurt a.M. (1981).

Schanze, Erich (1986): "Investitionsvertraege im internationalen wirtshaftsrecht" (Studien zum internationalen rohstoffrecht) Metzner, Frankfurt a.M. (1986).

Schanze, Erich (1988): "Constructive Jurisprudence in Mining Agreements" in Jaenicke et al (eds): "International Mining Investment" Metzner, Frankfurt a.M. (1988).

Schusterich, Kurt M. (1984): "International Jurisdictional Issues in the Arctic Ocean" 14 ODIL 239 (1984).

Selvig, Erling (1982): "Konsesjonssystemet i Petroleums-virksomheten", in Bull et al.: "Innfoering i Petroleumsrett" 2. ed., Sjoerettsfondet, Oslo (1982).

Smiley, Jane (1988): "The Greenlanders" Fontana, Glasgow (1988).

Smith, David & Wells, Louis (1976): "Conflict Avoidance in Concession Agreements" 17 Harv.Int.L.J. 51 (1976).

Soendergaard, Lars (1984): "Historien om Nordsoefelterne", Gyldendal AV, Copenhagen (1984).

Soerensen, Max (1971): "Folkeret" Berlingske Forlag, Copenhagen (1971).

Soerensen, Max (1973): "Statsforfatningsret" (2. ed. by Peter Germer) Juristforbundets Forlag, Copenhagen (1973).

Stalin, Joseph (1913): "Marxism and the national-colonial question" Proletarian Publishers, San Francisco, USA (1975).

Statens Samfundsvidenskabelige Forskningsraad (1981): "Samfundsforskning i Groenland. 1. Delrapport" Copenhagen (1981).

Sveistrup, P.P. (1953): "Rigsdagen og Groenland", pg. 203 - 311 in "Den Danske Rigsdag 1849 - 1949" vol. VI, J.H. Schultz Forlag, Copenhagen (1953).

Tesón, Fernando R. (1984): "State contracts and oil expropriations: The Aminoil-Kuwait Arbitration" 24 Va.J.Int.L. 323 (1984).

Theutenberg, Bo Johnson (1983): "The Arctic Law of the Sea" 52 NTfIR 23 (1983).

Thompson, William F. et al (ed)(1985): "World Energy Markets: Stability or cyclical change" International Association of Energy Economists, Westview Press, Pensylvania (1985).

Thylstrup, Asger (1981): "The legal character of the petroleum licences in Greenland" in Daintith (ed): "The legal character of petroleum licences: A comparative Study" University of Dundee (1981).

Trap, J.P. (ed.)(1970): "Danmark" (5. ed.), G.E.C. Gads Forlag, Copenhagen (1970).

Tronslin, Peter (1986): "The Norwegian Petroleum Regime", Marius no. 115, Nordisk Institutt for Sjoerett, Oslo (1986).

Tschanz, Pierre-Yves (1984): "The contributions of the Aminoil Award to the law of State contracts" 18 International Lawyer 245 (1984).

Udvalget vedroerende tilladelser og Koncessioner (1974): "Rapport til Ministeren for Groenland" Ministeriet for Groenland, Copenhagen (1974).

United Nations (1981): "Yearbook of Industrial Statistics" United Nations, New York (1981).

Vibaek, Jens (1978): "Reform og Fallit 1784 - 1830" 10 Politikens Danmarks Historie 11.(1978)

Viemose, Joergen (1977): "Dansk kolonipolitik i Groenland" Demos, Copenhagen (1977).

Vigh, Gert (1978): "Generel orientering / statusrapport vedroerende raastoffer i Groenland" Julianehaabkonferencen, Ministeriet for Groenland, Copenhagen (1978).

Vinding Kruse, Fr. (1929): "Ejendomsretten" Vol. I-V, Nyt Nordisk Forlag, Copenhagen (1929-1933)

von Eyben, W.E. (1984): "Panterettigheder" 7. udg. Gad, Copenhagen (1984).

von Münch, Ingo, et al (1982): "Besonderes Verwaltungsrecht", 6. ed., Walter de Gruyter, Berlin - New York (1982).

Wade, E.C.S. & Bradley, A.W. (1985): "Constitutional and administrative law" 10. ed., Longman Group Ltd, London (1985).

Wahl, M.E. & Wiese, P. (ed.)(1984): "Kongelig Hof og Statskalender 1984" A/S J.H. Schultz, Copenhagen (1984).

Wang, Erik B. (1976): "A comment on the Arctic in question" 14 CYIL 307 (1976).

Weiss, Friedl (1985): "Greenland's withdrawal from the European Communities" 22 CMLR 173 (1985).

Waelde, Thomas (1979): "Functions of the contract and the negotiation process" chapter 5 in Kirchner et al: "Mining Ventures in Developing Countries, Vol. I" Metzner, Frankfurt a.M. (1979).

Waelde, Thomas (1987): "Investment policies in the international petroleum industry: Responses to the current crisis" in Khan (ed): "Petroleum Resources and Development" Belhaven Press, London (1987).

Zorn, Stephen (1983): "Permanent Sovereignty Over Natural Resources" 7 Natural Resources Forum 321 (1983).

ABBREVIATIONS

Periodicals

Am.J.Int.L.	American Journal of International Law (USA)
Ariz.L.R.	Arizona Law Review (USA)
CMLR	Common Market Law Review (Belgium)
Col.L.R	Columbia Law Review (USA)
CWRJIL	Case Western Reserve Journal of International Law (USA)
CYIL	Canadian Yearbook of International Law (Canada)
FT	Folketingstidende (Copenhagen)
Gr.Pos.	Groenlandsposten (Greenland)
GYIR	German Yearbook for International Law (Federal Republic of Germany)
Harv.Int.L.J.	Harvard International Law Journal (USA)
His.Tid.	Historisk Tidsskrift (Copenhagen)
HRJ	Human Rights Journal (France)
ICJ Reports	International Court of Justice Reports (The Hague)
ICSID Rev.	International Centre for Settlement of Investment Disputes Review (USA)
ILM	International Legal Materials (USA)
J.E.R.L.	Journal of Energy and Natural Resources Law (UK)
KvG	Kundgoerelser vedroerende Groenland (Copenhagen)
Lovt.	Lovtidende (Copenhagen)
LWLR	Land and Water Law Review (USA)
Marius	Marius (Oslo)
Mar.Pol.	Marine Policy (USA)
Min.L.R.	Minnesota Law Review (USA)

ND	Nordisk Domssamling (Copenhagen)
N.Da.L.R.	North Dakota Law Review (USA)
NGL	Nalunaerutit – Groenlandsk Lovsamling (Copenhagen)
Nord.Kon.	Nordisk Kontakt
NTfIR	Nordisk Tidsskrift for International Ret – Nordic Journal of International Law (Acta Scandinavica Juris Gentium)(Copenhagen)
8ODIL	Ocean Development and International Law
Or.L.R.	Oregon Law Review (USA)
PLRLD	Public Land and Resources Law Digest (USA)
Politica	Politica (Copenhagen)
Politiken	Politiken (Copenhagen)
Retfaerd	Retfaerd (Copenhagen)
TfGR	Tidsskrift for Groenlands Retsvaesen (Copenhagen)
UCLA–Alaska L.Rev.	University of California Los Angeles – Alaska Law Review (California, USA)
UfR	Ugeskrift for Retsvaesen (Copenhagen)
UNSWLR	The University of New South Wales Law Review (Australia)
Va.J.Int.L.	Virginia Journal of International Law (USA)
VUWLR	Victoria University of Wellington Law Review (New Zealand)
W.Va.L.R.	West Virginia Law Review (USA)

Other bibliographic abbreviations

Bet.837:	Betaenkning 837, "Hjemmestyre I Groenland", Statens Indkoeb/–Schultz, Copenhagen 1978.
Bogen om Groenland:	Hjalmar Petersen (ed.): "Bogen om Groenland", (2.ed.), Politi–

kens Forlag, Copenhagen 1978.

Danish Law: Hans Gammeltoft-Hansen (et al.): "Danish Law. A general Survey", G.E.C.Gads Forlag, Copenhagen 1982.

Gr.His.Mind.. "Groenlands Historiske Mindesmaerker", Copenhagen 1838.

Julianehaab-konferencen: Ministeriet for Groenland: "Konferencen vedroerende Mineralske Raastoffer i Groenland", Qaqortoq (Julianehaab), June 1978.

Juridisk Formularbog: Niels Pontoppidan (et al.): "Juridisk Formularbog", (12.ed.), Juristforbundets Forlag, Copenhagen 1983.

Kongelig Hof og Statskalender: M.E.Wahl & P.Wiese: "Kongelig Hof og Statskalender 1984", A/S J.H.Schultz, Copenhagen 1984.

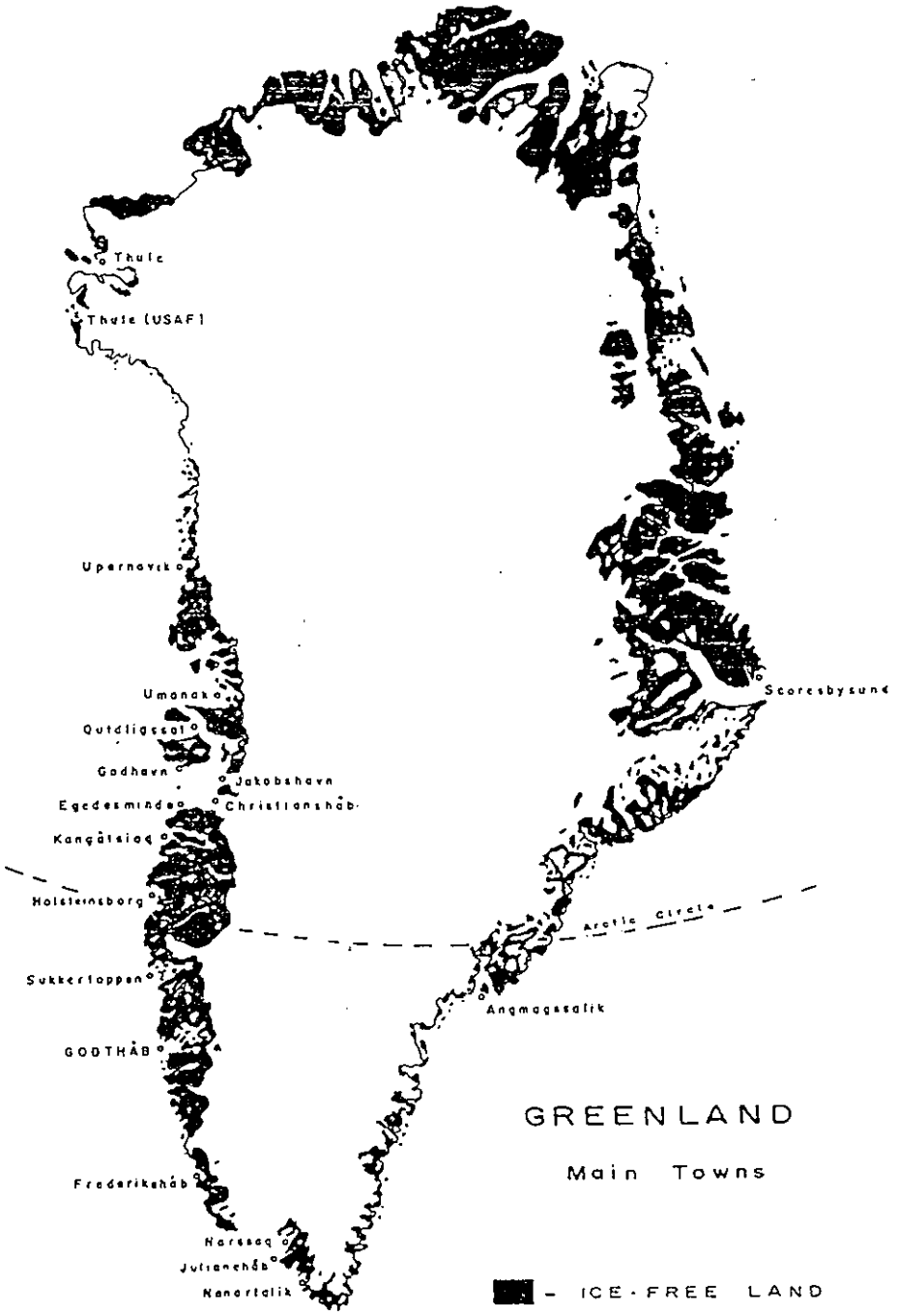
Politikens Danmarks Historie: John Danstrup (ed.): "Danmarks Historie", (3.ed.), Politikens Forlag, Copenhagen 1977-78.

Schultz Danmarkshistorie: Aage Friis (ed.): "Schultz Danmarks-historie", J.H.Schultz Forlag, Copenhagen 1941-43.

Trap: J.P.Trap (ed.): "Danmark", (5.ed.), G.E.C.Gads Forlag, Copenhagen 1970.

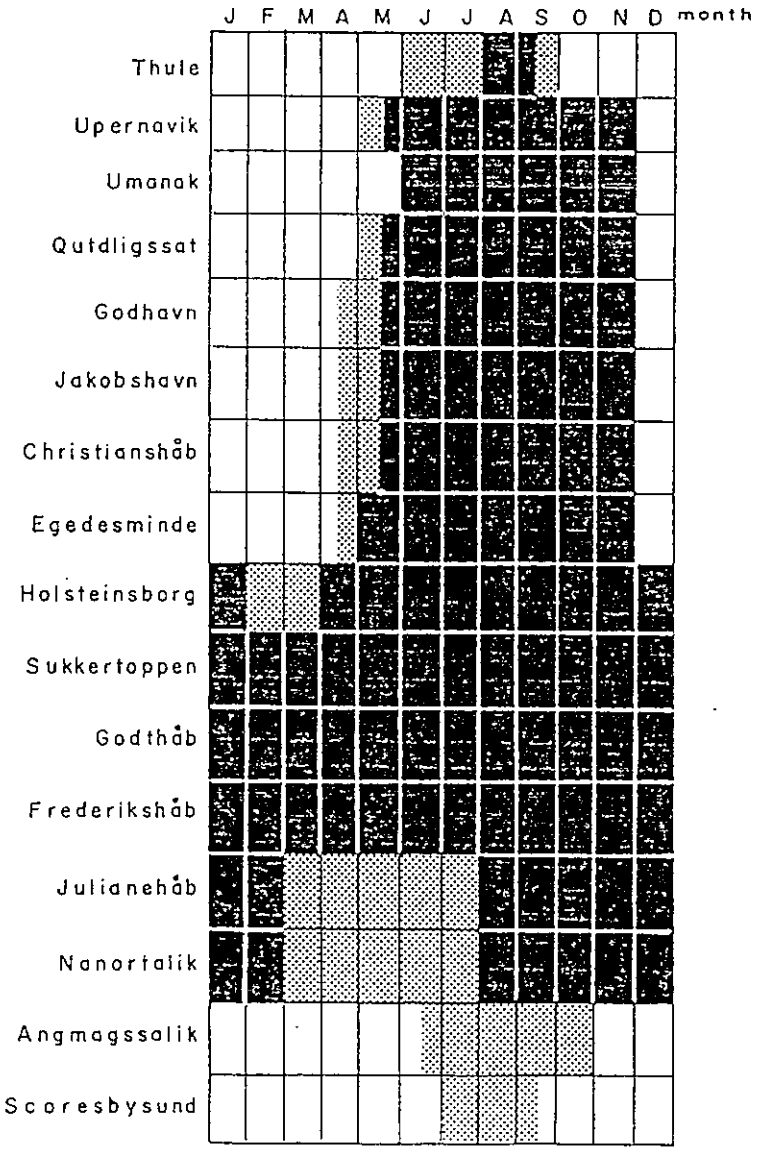
APPENDIX 1

Greenland – Main towns and ice free land.



APPENDIX 2

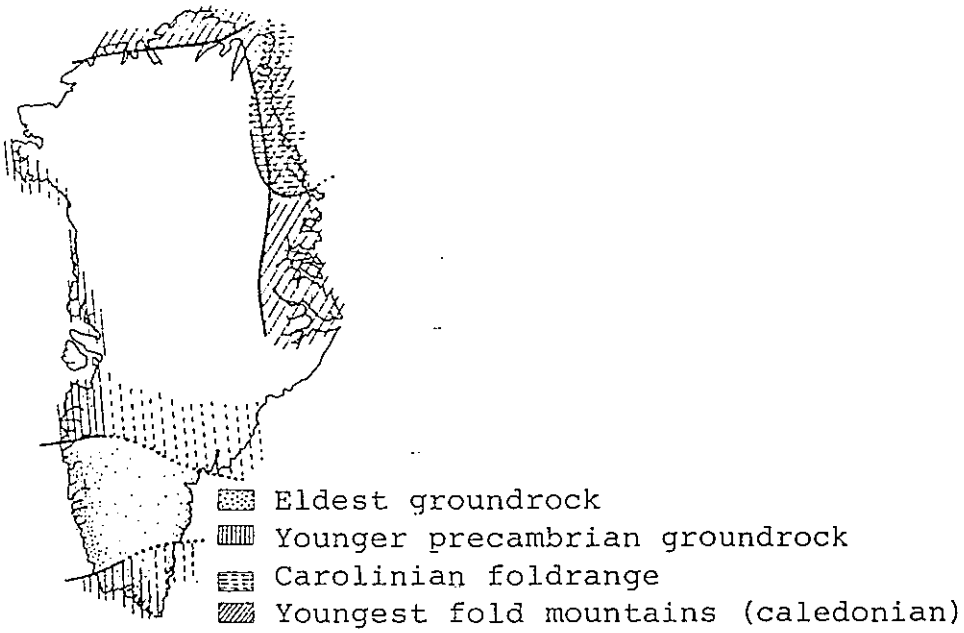
Shipping seasons in Greenland.



(Source: Willam G. Mattox, 1973)

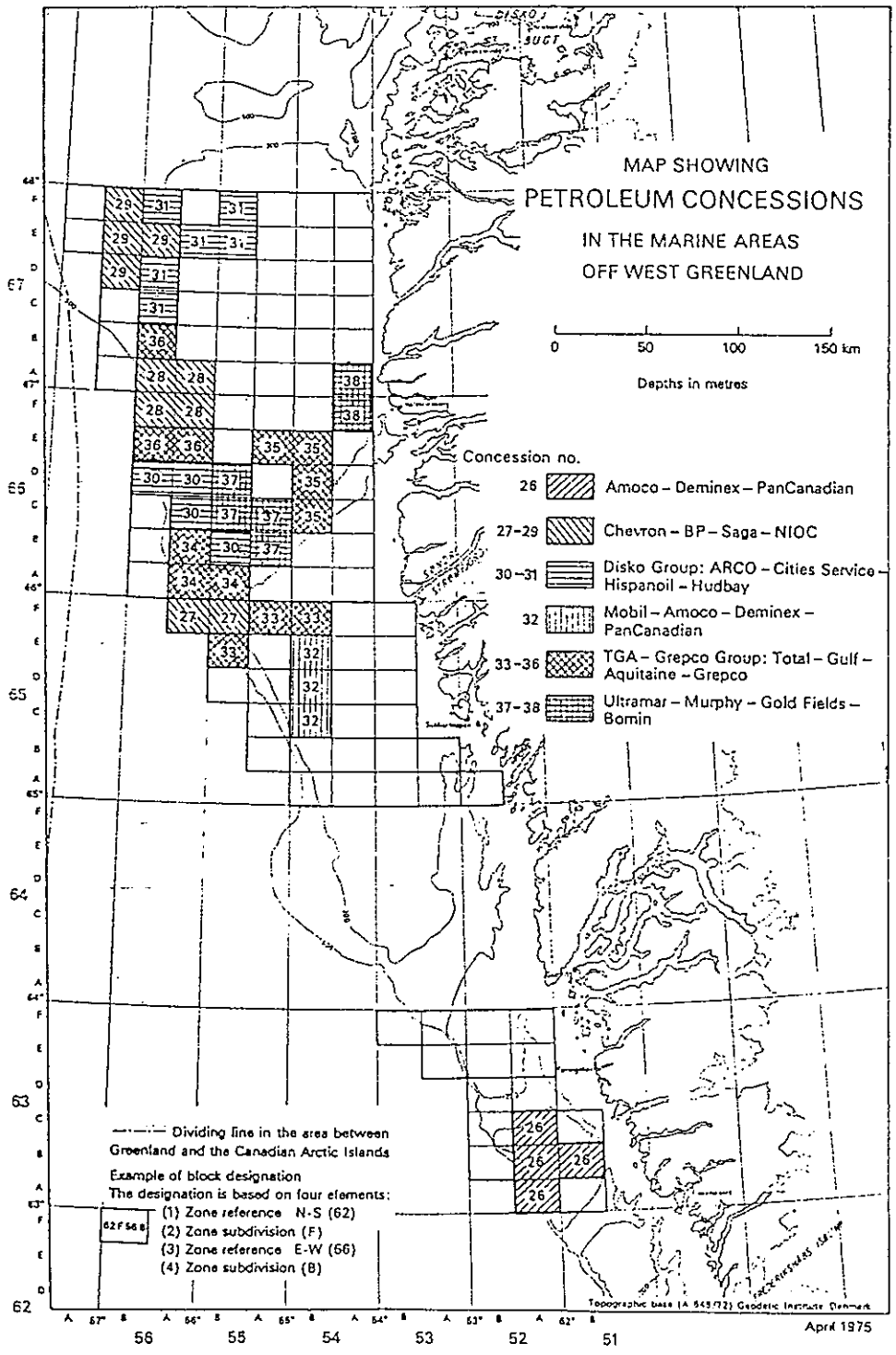
APPENDIX 3

Fold mountain ranges in Greenland.



APPENDIX 4

Hydrocarbon concessions in the marine areas off West Greenland.



SUMMARY IN DANISH LANGUAGE

Resumè af afhandlingen "Mineral koncessioner og jura i Grønland".

Afhandlingen består af 14 kapitler. Det første kapitel rummer en introduktion med angivelse af afhandlingens mål og struktur. Kapitel 2 er en introduktion til Grønland som land, og særligt i relation til mineralforekomster, medens kapitel 3 giver en historisk baggrund for Grønlands situation. Kapitel 4 er en diskussion af henholdsvis extraterritoriale og interne krav på Grønlands grund. Den folkeretlige diskussion om rettigheder fortsættes i kapitel 5 i relation til havene omkring Grønland. Kapitel 6 behandler Grønlands tilknytning til EF. Kapitlerne 7 og 8 behandler det administrative system og det juridiske system, og herunder særligt i relation til retten til jord. I kapitel 9 gennemgåes råstoford-ningen. Kapitel 10 er en gennemgang af gældende ret i relation til offshore aktiviteter. Kapitlerne 2 – 10 er særligt informative om faktiske juridiske forhold i Grønland, og afklarer en række tvivlspunkter om gældende ret i almindelighed i relation til Grønlandske forhold.

De nævnte kapitler kunne stå for sig selv, men udgør i sammenhængen et grundlag for og en optakt til afhandlingens anden del, der er væsentligt mere teoretisk og empirisk underbygget, og samtidigt internationalt juridisk orienteret. Kapitel 11 er en terminologisk og global oversigt over det juridiske indhold af koncessionsbegrebet. På baggrund heraf indeholder kapitel 12 en analyse af det juridiske indhold af tidligere tiders grønlandske mineral koncessioner. Kapitel 13 indeholder en detaljeret gennemgang og analyse af funktionerne af bestemmelserne i nyere koncessioner med henblik på definition af disses natur, mål og juridiske kvaliteter. Kapitel 14 indeholder nogle samlede betragtninger, hvorunder afhandlingens forskellige resultater sættes i relief.

I introduktionen til afhandlingen anføres, at en mere rammende titel for værket ville have været "Den offentlige og den private ret og den statsretlige, den lovgivningsmæssige og den faktiske situation i Grønland anvendt som eksempel og som projektor for komparative og transnationale diskussioner om den juridiske karakter af rettighederne og magten givet fra en suveræn stat til et privat selskab med hensyn til udvinding af hårde mineraler og kulbrinter i tyndt befolkede områder af territoriet".

Som en indledning til de teoretiske diskussioner er opstillet et hovedpostulat, der kunne søges verificeret på mange forskellige måder; Nemlig at Grønland er et gammelt men moderne og vel reguleret samfund, der ikraft af på den ene side mineralske ressourcer og på den anden side et vanskeligt klima byder på udstrakte muligheder for økonomiske risici og eventyr, hvilket dog er indenfor stabile lovgivningsmæssige og aftaleretlige rammer, med velkendte juridiske elementer fra skandinavisk og europæisk ret.

Til undersøgelsen af postulatet er opstillet fire hjælpemål. Det første er at identificere den statslige aftaleparts forhandlingsgrundlag i bred forstand ved at undersøge de juridiske resultater af statens udvikling og af dens magt indadtil og udadtil i relation til Grønland. Det andet hjælpemål er umiddelbart og i sig selv ved den faktiske juridiske afklaring og fremlæggelse af information om gældende ret på en række områder, der regulerer eller berører udvindingsaktiviteter, at nedbryde en grundlæggende mistillid mellem parterne. Et tredje hjælpemål er at etablere et indtryk af troværdighedsgraden, der kan fæstnes på det statslige system. Dette sker ved undersøgelser af alderen og kompleksiteten af lovgivning og procedurer, samt omfanget af tvister. Det fjerde mål kan karakterises som en krydsrevision, idet en undersøgelse af det nationale juridiske systems kvalificering af arrangementerne mellem staten og det private selskab, koncessionæren, kan afsløre hvorledes Staten vil reagere i tilfælde af et utilfredsstillende udkomme til befolkningen, og dermed afsløre soliditeten af det juridiske system, som en koncessionær må investere sit økonomiske liv i.

Gennemgangen af de nævnte forhold levner mulighed for opfyldelse af et femte og selvstændigt mål, nemlig generelle og globalt interessante konstateringer af udviklinger i områder af den internationale ret og af koncessionsjuraen.

I afhandlingens andet kapitel beskrives Grønlands udstrækning og kyster, og særligt beskrives det barske klima med forskellige former for isproblemer. Endvidere berøres de geologiske forhold som indledning til en præsentation af kendte mineralforekomster; Zink, bly, kobber, guld, jern, molybdæn, kryolit, platin, krom, uran, kulbrinter med flere. Der foreligger således både betydelige og uanede muligheder i Grønlands undergrund.

Grønland er beboet af en blandet befolkning, hvoraf størsteparten har historiske rødder i Nord Amerikas Inuitstammer. Grønland har imidlertid altid haft tilknytning til

Skandinavien, blandt andet fordi udvandrede vikinger befolkede Grønland i perioden år 1000 til år 1500. I 1720'erne blev Grønland gen-kolonialiseret af Danmark, og euro-inuit sam-eksistensen begyndte. Selvom indvandringen af Inuit fra Canada fortsatte forblev det samlede befolkningstal i Grønland dog under 10.000 indtil det 20. århundrede.

Den historiske udvikling kunne give anledning til retlig usikkerhed om retten til Grønlands undergrund. I tredie kapitel behandles mulige krav fra andre stater og herunder de norske krav, der fandt deres løsning for Haag-domstolen i 1933. Som et mere nærliggende problem diskuteres også eksistensen af stamme-rettigheder i forhold til formelle suverænitetsbetragtninger. Stamme-rettighederne kategoriseres som kollektive, hævd-vundne rettigheder til fortsat traditionel brug af bestemte geografiske områder, hvilke rettigheder findes at kunne eksistere indenfor rammerne af dansk suverænitet.

Grønland er en del af Danmark, og i kraft af Grundloven kan grønlandsk selvstændighed formentlig kun indtræde ved anarkistisk løsrivelse. Både integration og løsrivelse synes at være situationer acceptable under de Forenede Nationers regler. Indenfor rammerne af Grundloven har Grønland dog fået et væsentligt administrativt selvstyre ved Hjemmestyre-ordningen af 1978. I tilfælde af en højere grad af selvstændighed sikrer blandt andet den til hjemmestyre-ordningen knyttede råstofordning at arbitrære nationaliseringer indenfor råstofindustrien ikke vil blive accepteret i international ret. Økonomisk selvstændighed på grundlag af nationaliseringer er dermed fiktion.

Udover Grønland som landområde består Grønland af de territoriale vande, kontinentalsoklen og den økonomiske zone. Den grønlandske kontinentalsokkel rækker kun 25 - 50 sømil fra land. Danmark har imidlertid proklameret en økonomisk zone på 200 sømils bredde rundt om Grønland, kun underlagt begrænsninger i sin udstrækning ved lignende fremmede krav i relation til Island, Jan Mayen og Canada. I det Arktiske Ocean gør særlige juridiske forhold sig gældende, og forskellige teorier har været påberåbt til opdeling af havet i nationale områder. For Grønlands vedkommende foreligger der den specielle omstændighed, at den undersøiske højderyg Lomonosov Ryggen strækker sig mere end 350 sømil ud fra Grønlands kyst. Den geografiske Nordpol er beliggende ced Lomonosov Ryggen ikke langt fra 350 sømils grænsen. En betydelig del af Nordpol-området er dermed omfattet af Dansk suverænitet i henhold til Havretskonventionens artikel 76.

Afhængigt af råstofefterspørgslen og den teknologiske udvikling er der hermed uoverskuelige perspektiver i juraen, der regulererer udvindingen af Grønlandske råstoffer.

I perioden 1973 - 1985 var Grønland via Danmark del i det europæiske økonomiske fællesskab (EF), men Grønland nøjes nu med en associeringsordning med EF. De økonomiske overførsler fra det øvrige EF bortset fra Danmark var dog også ubetydelige sammenholdt med overførslerne fra Danmark. Ved associerings-ordningen har Grønland rettigheder til markedsadgang og udviklingsstøtte i lighed med tredieverden landene omfattet af Lomé konventionerne. I praksis har Danmarks deltagelse i fællesskabet imidlertid betydning for Grønland på godt og ondt. Med hensyn til råstoffer kan til eksempel nævnes, at grønlandsk kul og uran ved import til Danmark vil blive omfattet af EF-retlige regler. Det danske medlemsskab i sig selv begrænser mulighederne for at favorisere danske virksomheder og personer i forbindelse med råstofaktiviteterne.

Rent administrativt har ledelsen af Grønland udviklet sig gradvist fra centralt dansk kolonistyre til grønlandsk hjemmestyre, hvor kun grundlovsmæssige grænser og lovfastsatte undtagelser begrænser det lokale nærdemokrati og selvstyre. Forvaltningen af grønlandske råstoffer sker via Råstofforvaltningen under det danske energiministerium, men beslutninger træffes under gensidig vetoret i et dansk-grønlandsk politisk fællesudvalg, der er nedsat i henhold til lov om mineralske råstoffer.

De gældende love i Grønland er som udgangspunkt de samme som i resten af Danmark. Dette gør sig særligt gældende på privat rettens område, hvor danske love uden ændringer er sat i kraft for Grønland. Der er dog specielle regler med hensyn til tinglysning og med hensyn til retten til jord. I Grønland forefindes ikke ejendomsret til jord, men alene begrænsede brugsrettigheder. Staten er ejer af råstofferne, men sædvanlig lokal udnyttelse er tilladt uden koncession hertil. Retten til at benytte landområder opnås ved tilladelse eller ved hævd, men generelle sædvanerettigheder i traditionel juridisk forstand er ikke konstateret. Ligesom i Danmark kan der i Grønland ske ekspropriation af enhver type værdirettighed mod erstatning i henhold til Grundloven. Der foreligger således ikke private eller generelle rettigheder til land eller vand, der udgør absolutte juridiske hindringer for gennemførelse af projekter under mineral koncessioner.

Tvister under koncessioner henhører almindeligvis under voldgift, men eventuelle retssager, eksempelvis anlagt af trediemand, kan versere for Grønlands landsret eller for danske domstole. Under alle omstændigheder henhører pådømmelse af tvister ikke under hjemmestyremyndighederne.

Råstofaktiviteter skete på baggrund af en tre-trins proces; nemlig udstedelse af henholdsvis forundersøgelsestilladelse, efterforskningskoncession og udvindingskoncession. Dette tre trins system blev oprettet ved lov om mineralske råstoffer af 1965, og fortsatte næsten uændret over i 1978-loven med senere ændringer, uagtet at det i mellemtiden blev praksis at kombinere udstedelsen af efterforskningskoncession med rettigheder til udvindingskoncession. Ved 1991-loven blev det gjort til hovedregel at knytte efter-forsknings- og udvindingsretten sammen i samme koncession.

Lov om mineralske råstoffer foreskriver, at forundersøgelses-tilladelsen kun er en ikke-eksklusiv ret til at foretage geologiske undersøgelser. Derimod opstiller loven en lang række konkrete krav til indholdet af koncessioner, blandt andet med hensyn til frister, arbejdsplaner, afgifter, ophør og hensyn til personale, miljø og tredieparter. Loven nævner også, at koncessioner meddeles til danske aktieselskaber, men nævner intet om eventuel offentlig deltagelse i koncessionærkredsen, selvom dette er et almindeligt krav i praksis.

Imidlertid bør fremhæves, at loven stiller krav til koncessionernes indhold alene i forbindelse med deres oprettelse. Loven giver på ingen måde de administrative myndig-heder ret til efter koncessionernes oprettelse at fordre disses vilkår ændret eller annulleret, uden hvor der foreligger misligholdelse.

Lov om mineralske råstoffer regulerer også direkte eventuelle udvindingsaktiviteter i de territoriale farvande omkring Grønland, selvom loven ikke indeholder bestemmelser om offshore forhold. Ved 1991-loven er udtrykkeligt fastsat, at den også finder anvendelse på kontinentalsoklen. På kontinentalsoklen finder imidlertid også den danske kontinentalsok-kellov anvendelse, og for så vidt angår Grønland henvises herved til principperne i lovgivningen for Grønland. Hvor der ikke foreligger udtrykkelige grønlandske regler er det dermed danske love, og dermed de samme regler som i den danske sektor af Nordsøen, der finder anvendelse. Disse særlige forhold giver anledning til en lang række af små juridiske komplikationer i relation til offshore aktiviteter. For forskellige typer af olieplatforme og

andet udvindingsudstyr gælder også forskellige regelsæt, blandt andet på baggrund af søretten. Der kan til eksempel nævnes forskelligheder i relation til arbejdsmiljø, pantsætning, erstatningsansvar og national jurisdiktion. På den grønlandske kontinentalsokkel har der hidtil kun været forsket efter kulbrinter, hvilket skete i henhold til en koncessionsudbudsrunde i 1974. Efter foretagelsen af fem boringer blev den private efterforskning indstillet, hvorefter der kun har pågået undersøgelser i offentligt regie.

I afhandlingens anden del, fra kapitel 11 og fremefter, fokuseres på retsforholdet mellem Staten og mine- og olie-selskaberne, hvilket forhold typisk er reguleret ved et koncessionsdokument udstedt mellem parterne. Kapitel 11 indeholder en global oversigt med eksemplifikationer som indføring til forståelsen af selve koncessionsbegrebet. Umiddelbart kan anvendelsen af det latinske ord koncession forlede til forventninger om statsmagtsbeføjelser som romerske kejseres. I Skandinavien anvendes ordene koncession, udvindings-tilladelse, utmål, aftaler, med flere, næsten i flæng, idet ordet koncession dog måske særligt associeres med en omfattende, trans-national kontrakt, blandt andet på baggrund af udformningen af anglo-amerikanske oliekoncessioner i de arabiske lande, og mineral koncessioner andre steder.

På grund af de grundlæggende forskelle imellem juraen i kontinental-europa og i de engelsk-talende common law lande må man dog være forbeholden ved dragning af paralleller mellem retsnormer på niveau højere end praktisk juridiske forhold. De fleste common law jurister, der har beskæftiget sig med emnet, har konkluderet, at koncessioner og lignende arrangementer er blandinger af offentlig ret og privatret.

I USA findes talrige variationer, når mineral- og olie-arrangementer og de enkelte staters og offshore forhold sammenholdes. Typisk kan der forekomme privat ejerskab til forekomster i undergrunden i et område, og der indgåes derfor nogle lejeforholds-lignende brugsaftaler mellem ejere og udnyttere. I Canada, Australien, New Zealand og Storbritannien tilhører forekomster i undergrunden som udgangspunkt Kronen, og der er derfor udstedt lovgivning om licensudnyttelse heraf.

De anglo-amerikanske og andre udenlandske selskabers interesser i arabiske lande gav anledning til udvikling af særlige koncessionskontrakter, der siden måtte underkastes trans-nationale juridiske fortolkninger.

I Frankrig behandles koncessioner som et juridisk specielt område mellem admini-

strative og private kontrakter. Tysk ret har udviklet sig til at behandle råstofudvindingsforhold som administrative forhold.

Af betydning for forståelsen af grønlandske retstilstande er særligt koncessionsbegrebet i norsk og især i dansk ret. Hverken den norske eller den danske grundlov berører emnet direkte, og af speciel grundlovsmæssig betydning er kun ekspropriations-beskyttelsen. Både i Danmark og i Norge er der udstedt olie udvindingstilladelser i henhold til lovgivning herom, og disse tilladelser er i den juridiske teori behandlet som offentlig-retlige instrumenter med privat-retlige elementer, eller omvendt. På grundlag af kontraktretlige overvejelser har den norske højesteret statueret i en central retssag, Phillip-Ekofisk royalty sagen, at statsmagten ikke var berettiget til efterfølgende at kræve ændringer i en koncessions regler om betalinger fra koncessionæren til staten.

Mange forvaltningsretlige regler vil ikke kunne anvendes på koncessionsforhold. Omvendt må der nødvendigvis udøves en form for forvaltning i forbindelse med udstedelsen af koncessioner. Det der er særligt interessant, er om forvaltningen eller lovgivningsmagten kan fordre efterfølgende ændringer i koncessionsvilkårene, og herunder særligt ændringer til økonomisk ugunst for koncessionæren. I mange situationer ville der være tale om ekspropriative indgreb.

Det har været almindeligt i Skandinavien at indgå aftale om olie- eller mineral indvinding imellem det offentlige og private selskaber. Disse aftaler er kaldet koncessioner, og disse er efter forhandlingernes afslutning blevet offentliggjort eller sat ikraft på samme måde som anden lovgivning. Dette ændrer imidlertid ikke på det forhold, at koncessionernes indhold er resultatet af forhandlinger, hvilket vil sige en aftale imellem parterne. Kundgørelsen må betragtes som en sikringsakt eller en prækluderende bestemmelse i forhold til trediemand. Denne side af koncessionssituationen kan måske sammenlignes med de ældre koncessionsforhold i Mellemøsten.

Nyere skandinaviske olierettigheder er allokeret via udbudsrunder over bestemte områder med faste aftale- eller tilladelsesvilkår. Man kunne tænke sig, at staten ville være tilbøjelig til at betragte standard-tilladelserne, der anvendes i Nordsø-aktiviteterne, som faste og formbundne offentlig-retlige tilladelser uden aftaleretlige elementer. Det er imidlertid meget nærliggende at betragte disse standard-koncessioner som adhæsionskontrakter, hvorved de som udgangspunkt ville blive underkastet en meget traditionel privatretligt orienteret juridisk fortolkningsmetode.

I Grønland påbegyndtes udvindingen af kryolit i 1860'erne på grundlag af en koncession udstedt til et dansk selskab. Da koncessionen skulle forlænges i 1939 blev staten inddraget ved medejerskab af et nyt koncessionær-selskab. Udover de afledede samfundsmæssige effekter, var medejerskabet statens eneste økonomiske interesse i udvindingen. På denne baggrund var koncessionen af en særlig retlig karakter, og senere ændringer blev ikke gennemført. Der blev dog indgået visse supplerende aftaler mellem staten og koncessionæren ved kryolitbruddets lukning i slutningen af 1980'erne.

Ved lov blev der i 1952 oprettet et delvist statsejet aktieselskab, der samtidigt blev tildelt en 50 års koncession til at udnytte en forekomst af bly og zink. Udover medejerskab skulle staten have økonomisk fordel i form af en særlig selskabsskat på 15 - 45 % af netto-overskuddet efter beregning af 5% kapitalafkast. Fra koncessionens bestemmelser kan iøvrigt fremhæves regler om arbejderbeskyttelse, inspektion, samt ekspropriation i forhold til tredjemand og voldgift. Råstofforekomsten blev imidlertid udtømt allerede i 1963.

På tilsvarende koncept blev der i 1962 dannet et aktieselskab til udnyttelse af en molybdænforekomst. Da kommerciel udnyttelse imidlertid ikke var iværksat indenfor en fastsat tidsramme blev koncessionen annulleret i 1975.

Både 1952- og 1962-koncessionen var resultat af forhandlinger. Aftalerne blev efterfølgende bekendtgjort som koncessioner på den almindelige for love foreskrevne måde ved optagelse i lovtidende, hvorved der er opstået en juridisk krydsning mellem aftaleret og offentligret.

Eksistensen af karaktertvivlen omkring en sådan krydsning er udgangspunktet for den videre sammenligning af detaljerne ved de to nyeste grønlandske koncessioner; Greenex koncessionen fra 1971 vedrørende en bly og zink forekomst, og Jameson Land koncessionen fra 1984 vedrørende mulige kulbrinteforekomster.

Om Greenex koncessionen bemærkes indledningvis, at denne vedrører tildeling af rettigheder til en påvist forekomst af mindre værdifuld malm i et iøvrigt ikke udbygget område. Minen blev igangsat på et tidspunkt, hvor der ikke var hjemmestyre i Grønland, og hvor der var stor statslig interesse i igangsætning af sådan industri af beskæftigelsesmæssige årsager. Jameson Land koncessionen vedrører derimod et ubeboet område i Østgrønland, og er oprettet efter gennemførelsen af hjemmestyreordningen og råstoford-

ningen. Desuden adskiller den sig væsentligt fra Greenex koncessionen ved at angå olie, hvis forekomst ikke er påvist. Begge disse grønlandske koncessioner er imidlertid individuelt forhandlet mellem staten og koncessionæren, i modsætning til koncessionerne i den danske del af Nordsøen. Som reference henvisning er i sammenligningen inddraget en model-tilladelse fra 2. udbudsrunde vedrørende Nordsøen.

Generelt og umiddelbart set er en koncessionærs rettighed i henhold til en koncession en eksklusiv ret til at søge efter kommercielle mineral forekomster med ret til efterfølgende at udvinde disse, sidstnævnte dog under forbehold af statens efterfølgende tiltrædelse. De udvundne mineraler tilhører koncessionæren til ejendom, muligvis allerede fra det tidspunkt hvor koncessionæren har taget skridt til udvinding. Spørgsmålet om ejendomsrettens overgang er imidlertid ikke direkte berørt i koncessionerne og er mindre interessant i inter partes forholdet. Statens "ydelse" under koncessionen til koncessionæren kan umiddelbart betragtes som et negativt afgrænset løfte om ikke at ville yde kolliderende rettigheder til trediemand i relation til de konkrete råstoffer og det konkrete geografiske område. Objektet for koncessionerne er således relativt og tilstrækkeligt klart.

Staten har mange økonomiske interesser i fremme af mineral-udvinding, f.eks. bedring af udenrigshandelstallene og beskæftigelsesgraden. Sådanne interesser er meget væsentlige for staten. For koncessionæren er det imidlertid de økonomiske betingelser fastlagt i koncessionerne, der er afgørende. Koncessionæren skal betale for koncessions-objektet med en direkte økonomisk modydelse for statens løfte givet ved koncessionen. Dette sker ved aftalte investeringsterminer, årlige område afgifter, produktions-royalty, refusion af statslige udgifter, påtvunget senere offentlig deltagelse som medkoncessionær, og desuden et større eller mindre omfang af almindelige tilsvarspligter i form af moms, afgifter, personskatter og selskabsskat. Størrelsen og forudsigelighedsgraden af disse direkte økonomiske ydelser er betydende for koncessionærens rentabilitetsberegninger.

De mest betydningsfulde økonomiske overførsler er den indkomstbaserede selskabsskat og den produktionsbaserede royalty. Disse overførsler får imidlertid først betydning på det tidspunkt, hvor stort set alle koncessionærens hidtidige udgifter er trukket fra og dermed er dækket ind. Den største økonomiske byrde for koncessionæren er derfor risikoen for at foretage og binde store investeringer uden at disse for det første betaler sig selv tilbage og for det andet giver et i forhold til risikoen passende kapitalafkast. Udover salgs-markedsforholdene er det især geologiske forhold og også politiske-juridiske forhold, der

som følge af usikkerhed udgør risici.

Om de konkrete elementer af økonomisk karakter skal bemærkes, at betaling af royalty istedet for skat er klart og overskueligt, men måske også hæmmende for udviklingen. Generelt set er de grønlandske systemer fremmende for udvindingens udviklingshastighed. Dog skal tilføjes, at deltagelse af offentlige medkoncessionærer med deraf følgende opbygning af statsligt uafhængige økonomiske giganter synes hæmmende for koncessions-forholdene og formålsløst for staten.

Under koncessionerne har koncessionærerne en lang række pligter udover foretagelse af betalinger til staten. Der forekommer bestemmelser om faglig standard, om forarbejdning og transport af mineraler, supplerende efterforskning, statslige forkøbsrettigheder, omsorg for medarbejderne, anvendelse af national arbejdskraft og nationale leverandører m.v., overførsel af teknologi og know-how, udvikling af nærområdet og beskyttelse af miljøet. Nogle af disse pligter er udtryk for almindelige vilkår og forudsætninger, der kan forekomme selvfølgelige. Andre forhold ville under andre omstændigheder have været reguleret ved andre offentlige forskrifter. Endelig er der nogle af pligterne, der er af indirekte økonomisk karakter, og som sådanne er accessoriske økonomiske ydelser for koncessionæren, medens de for staten er af primær betydning. Særligt er udviklingen af lokalområdet af statslig interesse, og de afledede økonomiske effekter af nationale ordrer og lønninger er af stor værdi. I yderste konsekvens sikrer udviklingen af området og tilførslen af know-how, samt selve mineralet som trans-national handelsvare, at staten forstærker sin egen position som uafhængig stat.

Styrkeforholdet mellem koncessionær og stat afspejles i koncessionens udformning. Greenex og Jameson Land koncessionerne blev individuelt forhandlet og blev ikke offentliggjort i lovtidende, således som de ældre koncessioner. De fremstår istedet som omfattende aftaledokumenter med parternes underskrifter tilsidst.

Koncessionerne indeholder visse regler om trediemands succession i koncessionærens rettigheder med statens accept. Hvis koncessionen blot var en tilladelse istedet for en kontrakt, ville det ikke være nødvendigt at inkludere sådanne regler. Andre trediemænds rettigheder er også omtalt, idet koncessionerne udtrykkeligt ikke ændrer eksisterende rettigheder. Men i fortsættelse heraf erklærer staten sig villig til at gennemføre nødvendige ekspropriationer.

Staten spiller rollerne dels som suveræn statsmagt og dels som aftalepart overfor

koncessionæren, og koncessionsteksterne indeholder faktisk udtryk for tilsikringer om, at statsmagtens administrative procedurer ikke skal være overvældende i forhold til de aftalte rettigheder og pligter under koncessionerne. Dette skal nok ses i lyset af, at der eksisterer en lang række udtrykkelige pligter til afgivelse af informationer til staten, idet disse dog afgives i fortrolighed. Samtidigt er angivet hvorledes staten vil udøve tilsyn i forskellige relationer og med forskellige formål.

Det er således klart, at der ved koncessionerne foreligger privatretlige aftaler med koncessionæren, om hvorledes staten som statsmagt vil benytte sine statsmagtsbeføjelser endog til koncessionærens fordel, som f.eks. til ekspropriation af trediemands rettigheder. Koncessionsaftalen med statsmagten kan også have den virkning at nye kolliderende rettigheder ikke kan opstå.

Da koncessionerne er at betragte som aftaler mellem to parter, indeholder koncessionerne også regler om aftalernes udløb og forlængelse, om misligholdelse m.v. og om ændrede økonomiske omstændigheder (hardship). De omhandlede koncessioner er imidlertid underudviklede med hensyn til teknikker til imødegåelse af konsekvenser af ændrede omstændigheder. Men dette er formentlig udtryk for en almindelig dansk forventning om at økonomiske uoverensstemmelser afklares ved en salomonisk løsning, der findes ved en fornuftig diskussion, når konkrete problemer er opstået.

Koncessionerne indeholder visse elementer til konflikt-løsning, nemlig angivelse af anvendelse af dansk ret og dansk værneting, samt voldgiftsprocedurer. De danske myndigheder har dog vist sig fleksible og pragmatiske, idet det ved en supplerende aftale vedrørende Greenex blev aftalt, at visse aktie-overdragelsesforhold skulle afklares i overensstemmelse med canadisk ret.

Disse forskellige ophørs- og konfliktløsnings-paragraffer i koncessionerne er tydeligt kontraktsretlige i deres natur. Udformningen af disse bestemmelser er måske ikke helt neutral i forhold til koncessionæren, idet den danske stat så at sige er på hjemmebane i dansk ret. Det kunne således påståes at være mere fair at vedtage anvendelse af et tredielands eller supra-nationale regler. På den anden side kan anvendelsen af dansk kontraktsret siges at være prisen for overhovedet at få det juridiske grundlag for udvindingsaktiviteten flyttet fra den offentlige til den privatretlige sfære.

Det skal dog også erindres, at behandlingen af koncessioner som kontrakter kan

indebære administrative fordele for staten. Administrationen behøver ikke at tage hensyn til almindelige forvaltningsretlige krav, som f.eks. hjemmel, saglighed, habilitet, lighedsgrundsætninger, ligesom ombudsmanden muligvis ikke har indsigt i koncessionsforholdet.

Det er ihvertfald sikkert, at koncessioner ikke blot er et udtryk for suverænens magtudøvelse. En koncession er en langtids kontrakt baseret på gensidig afhængighed og tillid, og på forventning om at den også løbende tilpasses nye situationer.

De grønlandske koncessionsforholds indhold og forløb efterlader et juridisk tvetydigt og tungt, men stort set tillidsvækkende indtryk af statens koncessions–apparatus.